

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 MARCO MARTINEZ,

4 Plaintiff,

5 -against-

18 Civ. 4668 (VB)

6 PARAMOUNT COUNTRY CLUB LLC,

7 Defendant .

8 -----x
9
10 United States Courthouse
White Plains, New York

11 September 12, 2019

12
13 HONORABLE VINCENT BRICCETTI,
14 District Court Judge
15

16 KATZ MELINGER PLLC
Attorneys for Plaintiff
17 280 Madison Avenue
New York, New York 10016

18 BY: KENNETH J. KATZ
KATHERINE Y. MORALES
19

20 WILSON ELSEER MOSKOWITZ EDELEMAN & DICKER LLP
Attorneys for Defendant
150 East 42nd Street
21 New York, New York 10017

22 BY: NANCY V. WRIGHT
JOANNA COLACURCIO
23
24
25

1 THE CLERK: All rise.

2 THE COURT: Good morning, everybody.

3 THE CLERK: In the matter of Marco Martinez against
4 Paramount Country Club LLC.

5 Will counsel please note their appearance for the
6 record.

7 MR. KATZ: Kenneth Katz of Katz Melinger general for
8 the plaintiff.

9 MS. MORALES: Katherine Morales for.

10 MS. WRIGHT: Nancy Wright, Wilson Elser for the
11 defendant. Good morning.

12 MS. COLACURCIO: Joanna Colacurcio, Wilson Elser for
13 the defendant.

14 *****

15 THE COURT: This gentleman. K. Bradley Black.

16 THE COURT: Everybody prepared to go forward?
17 Mr. Katz.

18 MR. KATZ: Yes, your Honor.

19 THE COURT: Ms. Wright?

20 MS. WRIGHT: Yes, your Honor.

21 THE COURT: Of course, Mr. Martinez is the plaintiff
22 in this case, the motion is being made by the defendant to
23 compel arbitration but my understanding of the law here is that
24 once the defendant presents evidence of a contract and there's
25 certainly evidence of a contract to arbitrate, it becomes the

1 plaintiff's burden to show that there is no contract to
2 arbitrate. So the plaintiff is going to go first in this case
3 and we'll take it from there.

4 Who are your witnesses, Mr. Katz?

5 MR. KATZ: Just Mr. Martinez.

6 THE COURT: Just Mr. Martinez. And you have a
7 Court-certified interpreter.

8 MR. KATZ: Yes, your Honor.

9 THE COURT: Ms. Wright, who are your witnesses?

10 MS. WRIGHT: I have three your Honor. K. Bradley
11 Black, Ms. Wright, Susan Wright and also tar even KA ban, those
12 are the folks involved with the on boarding.

13 THE COURT: No relationship between you and
14 Ms. Wright?

15 MS. WRIGHT: No relationship.

16 THE COURT: I mean, that's okay.

17 MS. WRIGHT: None your Honor. I forgot to mention
18 that.

19 MR. KATZ: Is your microphone working? Tap your
20 microphone, please. Just tap it now. There it is now. okay.

21 MS. WRIGHT: Maybe it's my voice.

22 THE COURT: For whatever reason it seemed not loud
23 newspaper. Maybe it's me. It probably is me, so that's what
24 happens when you get old.

25 All right. Look, I know, really there's only one

1 issue here, which is did he sign the agreement or not? The
2 broader legal issue is did he agree to arbitrate or not. But
3 in order to get there, we first have to decide whether he
4 signed it. My understanding is that the plaintiff says he
5 didn't. There's an E-signature that appears to be his. But
6 he's saying he did not cause that to be affixed to the
7 agreement. Right? That's the gist of his position here.

8 MR. KATZ: Yes, your Honor.

9 THE COURT: And the defendants' position is, well,,
10 yes, it is. There you go. There's your factual issue.

11 There are other legal issues, because I know -- I
12 don't remember every detail, but I know that this company Oasis
13 came in at some point so, therefore, there's a question -- in
14 other words, they weren't there for the whole time. Let me
15 start over again.

16 This company Oasis came in at some point and this
17 policy of having the employees sign arbitration agreements came
18 into effect once Oasis was there, but Mr. Martinez had been
19 working at the country club for some period of time beforehand.
20 So there are issues about whether even if he did agree to
21 arbitrate, does it cover the prior period of time?

22 Seems to me there was one other issue.

23 Oh, yeah. The other sort of legal issue is whether
24 the defendant can enforce the agreement even though it was not
25 a signatory to the agreement. But the trial today, the bench

1 trial today, is only with respect to the issue that I
2 identified earlier which is whether Mr. Martinez electronically
3 signed the agreement.

4 MR. KATZ: Yes, your Honor.

5 THE COURT: We all on the same page with that?

6 MR. KATZ: Yes, your Honor.

7 MS. WRIGHT: Absolutely, your Honor.

8 THE COURT: All right. I'm familiar with the general
9 facts and allegations in this case so I don't really feel the
10 need to have any kind of opening statement, but if you've
11 prepared for one and you would like to make a brief opening
12 statements, you'll welcome to do it. You certainly do not have
13 to do it.

14 MR. KATZ: I have no need to do one, your Honor.

15 THE COURT: Ms. Wright?

16 MS. WRIGHT: I don't like talking unnecessarily. No,
17 your Honor.

18 THE COURT: Okay, great.

19 Are there any witnesses in the courtroom that -- I
20 mean, in other words, witnesses other than the first witness
21 that are likely to be called? We have Mr. Martinez is going to
22 be first.

23 Are any of your three witnesses here in the
24 courtroom?

25 MS. WRIGHT: They're all here, your Honor.

1 THE COURT: Well, do you want to invoke the rule of
2 sequestration?

3 MR. KATZ: Yes. I assume that Paramount's
4 representative gets to stay.

5 THE COURT: You have to speak a little more clearly,
6 Mr. Katz. Not your fault, but you do have you kind of swallow
7 your words a little bit and that's not good in this setting.
8 Just speak up, that's all.

9 MR. KATZ: Yes, I would like all witnesses, other
10 than the representative of the company who's sitting at the
11 table, to be out of the room during testimony.

12 THE COURT: I think that's the basic rule so I
13 thought one of your witnesses was testifying by video.

14 MS. WRIGHT: Yes, your Honor, but because of the
15 related health issues, I managed to get all the information I
16 need with her colleague who is here.

17 THE COURT: Oh, so there won't be any video?

18 MS. WRIGHT: No, your Honor.

19 THE COURT: Fair enough.

20 MS. WRIGHT: Thank you.

21 THE COURT: So the witnesses other than Mr. Beck, who
22 is effectively the client in this case, the other witnesses
23 will be excluded.

24 MS. WRIGHT: Okay, your Honor.

25 THE COURT: Not because we don't like them, but

1 because it's just a fair way to do this sort of thing.

2 All right? Okay. We ready to proceed.

3 MR. KATZ: Yes, your Honor.

4 THE COURT: All right then. Why don't you call your
5 first witness?

6 MR. KATZ: I call Mr. Martinez.

7 THE COURT: Come on up, sir. Sit there for a second.
8 I need my deputy to be here.

9 THE CLERK: The interpreter is sworn.

10 Judge, so he does not need the oath. He has an oath
11 on file.

12 THE COURT: You have an oath on file, sir?

13 THE INTERPRETER: Yes, sir.

14 THE COURT: What is your name?

15 THE INTERPRETER: Good morning.

16 My name is Victor G. Cruz, C-R-U-Z.

17 THE COURT: Mr. Cruz.

18 THE INTERPRETER: Yes.

19 THE COURT: Welcome, Mr. Cruz.

20 THE INTERPRETER: Thank you, your Honor.

21 (plaintiff Mamaroneck.

22 witness , having been previously duly sworn,
23 testified further as follows:

24 THE CLERK: Please be seated.

25 Please state your full name for the record, spelling

Angela O'Donnell, RPR, 914-390-4025

Martinez - direct (Katz)

1 your last name slowly.

2 THE WITNESS: Marco Martinez Cabrera.

3 THE INTERPRETER: Martinez, M-A-R-T-I-N-E-Z.

4 Cabrera, spelled C-A-B-R-E-R-A.

5 THE CLERK: Thank you.

6 THE INTERPRETER: You're welcome.

7 THE COURT: Okay, you may proceed.

8 MR. KATZ: Thank you, your Honor.

9 THE COURT: Mr. Cruz, could you maybe step down to
10 the floor. He'll hear from you there. You don't need to be --
11 we don't really need you because we're not going to transcribe
12 what you say in Spanish. The only thing you need to do is have
13 the witness be able to hear you and understand you, and I think
14 you can do that from there.

15 THE INTERPRETER: Thank you.

16 THE COURT: Go ahead, sir.

17 DIRECT EXAMINATION

18 BY MR. KATZ:

19 Q. Good morning, Mr. Martinez.

20 A. Good morning.

21 Q. Approximately when did you start working for Paramount
22 Country Club?

23 A. I began working at Paramount Country Club in 2014.

24 Q. Did there come a time when Paramount Country Club changed
25 payroll companies?

Martinez - direct (Katz)

1 A. Yes, sir.

2 Q. Do you recall approximately when that was?

3 A. In 2016.

4 Q. Did there come a time when you had a meeting with the new
5 payroll company?

6 A. Yes.

7 Q. Do you know who you met with?

8 A. Supposedly it was for a new company. The company they
9 changed for a new company.

10 Q. Where was the meeting?

11 A. In a room, in a room at Paramount.

12 Q. Were there any other employees from Paramount there?

13 A. All the cooks.

14 Q. What is your primary language?

15 A. Spanish.

16 Q. How long was this meeting, approximately?

17 A. Around 20 minutes.

18 Q. What language was the meeting conducted in?

19 A. In English.

20 Q. What did you understand from this meeting?

21 A. Nothing.

22 Q. After this meeting did there come a time you met with
23 Susan Wright?

24 A. I did meet Susan, but it was many days afterwards.

25 Q. And did you understand what the purpose of your meeting

Martinez - direct (Katz)

1 with Susan was for?

2 A. That they were going to change the payroll.

3 Q. Where was the meeting with Susan?

4 A. In her office.

5 Q. What language was Susan speaking to you in that meeting?

6 A. English.

7 Q. Was Susan at a computer during this meeting?

8 THE INTERPRETER: Could you repeat that?

9 Q. Was Susan at a computer during that meeting?

10 A. Yes.

11 Q. At any time during that meeting did you sit at that
12 computer?

13 A. No.

14 Q. At any time during that meeting did you sit at any
15 computer?

16 A. No.

17 Q. Does Susan have your personal information like your Social
18 Security number?

19 A. All my identifications.

20 THE COURT: Is the answer "yes" to that question?

21 THE WITNESS: Yes.

22 BY MR. KATZ:

23 Q. At any time during this meeting did you create an account
24 for Oasis Outsource Inc.?

25 A. No.

Martinez - direct (Katz)

1 Q. At any time during your employment with paramount did you
2 create an account with that Oasis Outsource Inc.?

3 A. No.

4 Q. At any time during this meeting did you create a password
5 for Oasis Outsource Inc.?

6 A. No.

7 Q. At any time during your employment with Paramount did you
8 create a password where Oasis Outsource Inc.?

9 A. No.

10 Q. At any time during this meeting did Susan ask you could
11 she create an account for you for Oasis Outsourcing Inc.?

12 A. No.

13 Q. At any time during this meeting did Susan ask you to
14 create, if she could create a password for you for Oasis
15 Outsourcing Inc.?

16 THE INTERPRETER: Could you repeat the question,
17 please?

18 Q. At any time during this meeting did Susan ask you could
19 she create a password for you for Oasis Outsourcing Inc.?

20 A. No.

21 THE COURT: At any time during this meeting did you
22 review the computer screen to see what was on the computer
23 screen.

24 A. No.

25 Q. At any time during this meeting did Susan ask you to

Martinez - direct (Katz)

1 review the computer screen?

2 A. No.

3 Q. When was the first time you became aware that Paramount
4 claimed you signed an arbitration agreement?

5 A. I knew through my attorneys who showed me the paper.

6 Q. In terms of timeframe was that after this lawsuit was
7 filed?

8 MS. WRIGHT: Objection.

9 THE COURT: Hold up.

10 MS. WRIGHT: Just objection to the form. Leading.

11 THE COURT: Well, it is leading. You've asked a lot
12 of leading questions to which you did not object.

13 I'm going to allow it. But this is your client. I
14 know that he's testifying through an interpreter, but to the
15 extent possible, you should avoid leading.

16 So the question was: He said, "I knew through my
17 attorneys who showed me the paper."

18 That was in response to the question, "When was the
19 first time you became aware of this?"

20 And then the next question was: "Was that after this
21 lawsuit was filed?"

22 So the question is, when you first learned about the
23 arbitration agreement, because your lawyer showed it to you,
24 was that after this lawsuit was filed?

25 THE WITNESS: Yes.

Martinez - cross (Wright)

1 BY MR. KATZ:

2 Q. Was there ever a time that you authorized anyone from
3 Paramount Country Club LLC to sign an arbitration agreement on
4 your behalf?

5 A. No.

6 Q. Was there ever a time that you authorized anyone from
7 Oasis Outsourcing Inc., to sign an arbitration agreement on
8 your behalf?

9 A. No.

10 MR. KATZ: I have no further questions, your Honor.

11 THE COURT: Any cross?

12 MS. WRIGHT: Yes, your Honor.

13 CROSS EXAMINATION

14 BY MS. WRIGHT:

15 Q. Good morning, Mr. Martinez.

16 A. Good morning.

17 Q. You testified earlier that you first had a meeting with
18 the new payroll company; correct? Oasis?

19 A. Yes.

20 Q. And you indicated that at that meeting where you indicated
21 all the cooks were present it lasted for about 20 minutes?

22 A. Yes.

23 Q. Where did the meeting occur?

24 A. At the room at Paramount.

25 THE COURT: One second. Did he just answer that

Martinez - cross (Wright)

1 question in English? When he just said at the room at
2 Paramount was that in English or Spanish.

3 THE INTERPRETER: No, he answer it in Spanish, if he
4 used the word, your Honor, room, probably that's the only word
5 in English that he just didn't answer.

6 THE COURT: Fair enough. Next question.

7 BY MS. WRIGHT:

8 Q. Which room in Paramount is that the same room Susan's
9 office was in?

10 A. No.

11 Q. Okay. Where in relation to the room that you met with the
12 Oasis folks was Susanne's office?

13 A. Susan's office is on one location and the room where the
14 meeting was held is the room used for buffets.

15 Q. How far from that room is Susanne's office? If you want
16 to use feet or something else.

17 A. Susan's office is located on the first floor where the
18 room where the meeting was held is on the second floor.

19 Q. What day did you meet with the payroll company?

20 A. (In English) Day. I don't remember the date.

21 THE COURT: Let me just state for the record. That
22 was definitely English. Because I don't speak Spanish, he
23 said, "I don't remember the date," in English. I think that
24 needs to be stated for the record.

25 So you don't remember the date?

Martinez - cross (Wright)

1 THE WITNESS: I do not remember the date.

2 BY MS. WRIGHT:

3 Q. Do you recall what month?

4 A. I do not remember the month but I do remember the year.

5 Q. What year?

6 A. '16.

7 Q. 2016?

8 A. 2016.

9 Q. And you indicated that your meeting with Susanne happened,
10 in your words, many days afterwards; correct? I'm sorry.
11 Susan.

12 A. Yes.

13 Q. Do you recall what day you met with Susan?

14 A. I do not remember the date.

15 Q. How long after the meeting with Oasis was your meeting
16 with Susan?

17 A. I do not remember.

18 Q. Was it more than a week later?

19 A. Yes.

20 Q. More than two weeks later?

21 A. More or less.

22 Q. Okay. And that was the date that you met with Susan where
23 you claim she filled out your paperwork for the payroll.

24 MR. KATZ: Objection. That's a --

25 THE COURT: Hold on.

Martinez - cross (Wright)

1 Mr. Cruz, when you hear "objection," just wait for me
2 to rule on it.

3 MR. KATZ: The objection is --

4 THE COURT: Hold on one second.

5 THE COURT: Just rephrase the question. Let's start
6 over again.

7 MS. WRIGHT: Sure.

8 BY MS. WRIGHT:

9 Q. And when you eventually met with Susanne, whatever the
10 date was, was the date you had indicated that she filled out
11 information for you on the computer?

12 MR. KATZ: Objection. The testimony wasn't that
13 Susan filled anything out.

14 THE COURT: Well, there's -- his testimony on direct
15 was when he met with Susan -- and you can translate this -- his
16 testimony on direct was that when he met with Susan she was
17 sitting at a computer but he was not.

18 THE WITNESS: No.

19 THE COURT: That's not a question. That's just me
20 speaking right now.

21 I don't think he ever -- I think Mr. Katz is right, I
22 don't think he ever testified that Ms. Wright filled out
23 information on the computer. Maybe she did, maybe she didn't,
24 but he didn't so testify. You can ask whether she did. In
25 other words, you need to rephrase the question.

Martinez - cross (Wright)

1 MS. WRIGHT: Sure.

2 THE COURT: Something along the lines of: When she
3 was sitting at the computer and you were not sitting at the
4 computer. What was she doing. What were you doing what did
5 you understand she was doing, that kind of thing.

6 BY MS. WRIGHT:

7 Q. When you met with Susan and she was sitting at the
8 computer, what was she doing?

9 A. Writing on the computer.

10 Q. Do you know what she was writing?

11 A. Supposedly all my information.

12 Q. When you say supposedly all your information, what are you
13 basing that on?

14 Did you see what she was writing?

15 A. I cannot read English.

16 Q. My question is did you see what she was writing?

17 A. I didn't see what she was writing. I see her writing.

18 Q. You indicated earlier that she was writing your
19 information. How do you know that that's what she was writing?

20 A. Because I was the one who was with her.

21 Q. At any point during your meeting with Susan did she tell
22 you that she was writing or entering your information?

23 A. No.

24 Q. Okay. During your meeting with Susan, did you see her
25 print out or did she show you any document which contained your

Martinez - cross (Wright)

1 information?

2 A. No.

3 Q. You indicated that you don't -- you can't read English;
4 correct?

5 A. That's correct.

6 Q. So you have no idea what she was inputting on that
7 computer on that date; correct?

8 A. No.

9 Q. Do you recall --

10 THE COURT: No what? No, no, that's a double
11 negative.

12 MS. WRIGHT: Okay.

13 THE COURT: You need to -- did you have any idea as
14 to what she was inputting on that computer?

15 THE WITNESS: All my information.

16 THE COURT: How do you know that?

17 MS. WRIGHT: Exactly.

18 THE WITNESS: Because all the employees had already
19 gone there.

20 BY MS. WRIGHT:

21 Q. I'm not sure I understand you. What do you mean all the
22 employees had already gone there?

23 A. All the employees from the kitchen, the kitchen employees,
24 all of them have already gone.

25 Q. Had already gone where?

Martinez - cross (Wright)

1 A. To enter all -- to put all their information.

2 Q. Put all their information with who?

3 A. With Susan.

4 Q. How do you know this?

5 A. Because I was sent to her.

6 Q. Did anybody tell you that they had gone to SusanneSusan
7 for her to enter their information?

8 A. No.

9 Q. Did you see at any point any of your information on the
10 screen that she was entering?

11 A. No.

12 Q. So at any point did Susanne say to you she was entering
13 your information on the computer?

14 A. No.

15 Q. Does Susanne speak Spanish?

16 A. No.

17 Q. The entire time you were meeting with Susan, did you have
18 any conversation with her?

19 A. No.

20 Q. Okay. Do you recall be submitting --

21 THE COURT: Hold on. Wait a second.

22 MS. WRIGHT: I'm sorry.

23 THE COURT: You sat in her office; is that correct?

24 THE WITNESS: Correct.

25 THE COURT: While you were in her office did you

Martinez - cross (Wright)

1 speak?

2 Did you open your mouth and speak?

3 THE WITNESS: Okay. I arrived there. I understand
4 what is said in the kitchen. I understand all of that what is
5 said in English. Anything kitchen related, anything vegetable,
6 food related I understand.

7 THE COURT: Okay that wasn't my question. My
8 question is -- it's actually Ms. Wright's question -- my
9 question is did you have any conversation with Susan right in
10 her office on that day in any language?

11 THE WITNESS: Yes.

12 THE COURT: What language?

13 THE WITNESS: My English is limited.

14 THE COURT: You understand that's your testimony
15 that's not my question.

16 THE WITNESS: It's really, sir, half and half.

17 THE COURT: Okay that's all I'm asking.

18 THE WITNESS: Okay.

19 THE COURT: Just answer my question, that's all.

20 Let's try one more time. Well maybe not. You're saying you
21 did speak to her is that correct.

22 THE WITNESS: Correct.

23 THE COURT: Half in English, half in Spanish?

24 THE WITNESS: Yes, combine them both.

25

Martinez - cross (Wright)

1 BY MS. WRIGHT:

2 Q. What was your conversation about when you spoke with her?

3 MS. WRIGHT: May I note for the record the witness
4 responded before --

5 THE COURT: Just say again Ms. Wright

6 MS. WRIGHT: May I note for the record that the
7 witness responded before the translation was completed.

8 THE COURT: My question to you was did he respond in
9 English or respond in Spanish?

10 MS. WRIGHT: He responded in Spanish.

11 THE COURT: What you're saying is you asked a
12 question in English.

13 MS. WRIGHT: Yes, your Honor.

14 THE COURT: Before it was translated into Spanish, he
15 responded in Spanish.

16 MS. WRIGHT: Yes, your Honor.

17 THE COURT: The reason you're making that note
18 because it suggests he understands English.

19 MS. WRIGHT: Yes, your Honor.

20 THE COURT: And also Spanish.

21 MS. WRIGHT: Yes, your Honor

22 THE COURT: Okay I understand that. Proceed.

23 BY MS. WRIGHT:

24 Q. Do you recall submitting documents a declaration where you
25 indicated that your meeting with Susan took place on

Martinez - cross (Wright)

1 September 26, 2016?

2 A. I wasn't given any copies.

3 Q. That is not my --

4 THE COURT: I suspect you're going to be given one
5 now.

6 Do you have this document you're referring to?

7 MS. WRIGHT: It's Exhibit A, your Honor, and it's the
8 declaration. I can give you a copy to opposing counsel. I'm
9 sorry, not Exhibit A. Where is it? Oh, it's the declaration,
10 I didn't have it as an exhibit, but I can walk it up to you
11 now?

12 THE COURT: Yes, I don't have that.

13 MS. WRIGHT: It was attached to the motions but I
14 will bring it up now.

15 THE COURT: Wait a second, Ms. Wright. Hold on a
16 second. Let's just find this document. This is a declaration
17 that Mr. Martinez signed as part of the motion papers that were
18 filed, is that what you're saying?

19 MS. WRIGHT: Your Honor, it was submitted by his
20 attorney on the motion.

21 THE COURT: Fair enough. I have it.

22 MS. WRIGHT: Okay. I have a copy.

23 THE COURT: Hold on one second. Hold on.

24 MS. WRIGHT: Okay.

25 THE COURT: Do you want Mr. Martinez to see this?

Martinez - cross (Wright)

1 MS. WRIGHT: Sure, your Honor, I can show it to him.

2 THE COURT: He can see my copy because I've got an
3 extra copy.

4 MR. KATZ: Just for a clarification, is that the
5 Spanish version?

6 THE COURT: Both. Well, what I just handed him was
7 in English and then it has a certificate of translation and
8 then it's in Spanish and the signature is on the Spanish
9 version, in other words, in other words an English version with
10 a signature blank followed by a certificate of translation into
11 Spanish followed by I I assume the correct translation into
12 Spanish and that's the portion of the document that's signed
13 are we talking about the same document, Ms. Wright.

14 MS. WRIGHT: Yes, your Honor.

15 THE COURT: And it bears a date of 26 October 2018;
16 is that right?

17 MS. WRIGHT: Yes, your Honor.

18 THE COURT: Okay. Go ahead. I assume you have this.

19 MR. KATZ: I want to make sure my client got a
20 Spanish version of it.

21 THE COURT: Both English and Spanish. Ask your
22 question, Ms. Wright.

23 BY MS. WRIGHT:

24 Q. Take a moment to look at the document and when you're on
25 done let me know, Mr. Martinez.

Martinez - cross (Wright)

1 THE COURT: It's pretty long, why don't you point him
2 to paragraph three.

3 MS. WRIGHT: Sure, it's paragraph three.

4 THE COURT: Paragraph three of the Spanish version.
5 Go ahead ask your question.

6 Q. Do you see in paragraph three your meeting with Susan
7 occurred on or about September 2016? (september 26, 2016)?

8 A. Yes.

9 BY THE COURT:

10 Q. Does that refresh your recollection now as to when you met
11 with her? (that was question)?

12 A. I do not remember the date but here it is.

13 Q. Right below that paragraph four where it says that your
14 meeting with Susan was brief, was very brief and was conducted
15 completely in English, do you see that?

16 A. Yes.

17 Q. But you're testifying now it was half English, half
18 Spanish that the conversation was conducted in?

19 A. It was I speaking.

20 Q. What were you saying during the meeting?

21 A. I do not remember.

22 Q. What were you talking about during the meeting?

23 A. If she asked me any questions I answered them in both
24 languages. Because I can't speak English well, a little.

25 THE COURT: Okay that wasn't the question. The

Martinez - cross (Wright)

1 question was: What were you talking about during the meeting,
2 is that the question Ms. Wright.

3 MS. WRIGHT: Yes, your Honor.

4 THE WITNESS: Not that we were talking. She ask any
5 questions I answered them in both language, English and
6 Spanish.

7 THE COURT: But what was the subject matter? Let me
8 ask a different question.

9 Were you talking about baseball?

10 THE WITNESS: No.

11 THE COURT: Were you talking about the weather?

12 THE WITNESS: No.

13 THE COURT: Were you tacking about golf?

14 THE WITNESS: We're not supposed to.

15 THE COURT: The answer is no, you were not talking
16 about golf?

17 THE WITNESS: No.

18 THE COURT: Were you talking about food?

19 THE WITNESS: No.

20 THE COURT: What were you talking about?

21 THE WITNESS: If we talk it was about the papers that
22 I was filling out.

23 THE COURT: You talked about the papers that you were
24 filling out?

25 THE WITNESS: Supposedly the ones that she was

Martinez - cross (Wright)

1 entering in the computer.

2 THE COURT: But the question is do you remember what
3 it is that you talked about?

4 THE WITNESS: No.

5 THE COURT: Okay next question.

6 BY MS. WRIGHT:

7 Q. Did she ask you for any personal information during that
8 meeting?

9 A. I don't remember.

10 Q. Do you recall anything at all that you said to her during
11 that meeting?

12 A. Yes.

13 Q. What do you recall?

14 A. I have only a short time because they are waiting for me
15 in the kitchen.

16 THE COURT: Okay, Mr. Martinez, you know that I'm the
17 judge in your case; right.

18 A. Yes, sir.

19 THE COURT: And I'm going to be making important
20 decisions about your case, you know that?

21 THE WITNESS: Yes, sir.

22 THE COURT: And do you know that part of the basis
23 for those decisions is whether I think you're telling the truth
24 or not?

25 THE WITNESS: Yes, sir.

Martinez - cross (Wright)

1 THE COURT: And I'm telling you that part of my
2 evaluation of whether you're telling the truth or not is
3 whether you answer questions directly asked by the lawyers or
4 whether you're being evasive in answering those questions.

5 THE WITNESS: Evasive?

6 THE COURT: Do you understand that that's part of my
7 decision about whether you're answering questions directly or
8 whether you're not answering questions directly.

9 THE WITNESS: What should I say, yes or no?

10 THE COURT: I don't know. Just answer.

11 THE WITNESS: I don't understand very well.

12 THE COURT: Do you understand, let me just tell you I
13 need to decide whether I think you're being truthful. That's
14 my job.

15 THE WITNESS: Yes, sir.

16 THE COURT: Part of that determination is whether I
17 think you're being -- you're answering questions directly or
18 whether you're not AEPBTSing questions directly that's part of
19 what I do, my job.

20 THE WITNESS: Yes, sir.

21 THE COURT: You need to answer questions directly.

22 THE WITNESS: EUFRPBLGS okay.

23 THE COURT: Ask that question again.

24 MS. WRIGHT: I don't remember what I asked would you
25 plead read back my question.

Martinez - cross (Wright)

1 THE COURT: Do you have the last question. (question
2 the read and interpreted by interpreter).

3 A. That I had to go back to the kitchen because they were
4 waiting for me.

5 Q. Is that something that you told Susan?

6 A. Yes.

7 Q. In English or Spanish?

8 A. In Spanish.

9 Q. Did she understand you?

10 A. She understands a lot of Spanish but do not speak a lot.

11 Q. You're saying Susan understands a lot of Spanish?

12 A. A lot.

13 Q. Did she tell you this?

14 A. We talk in the kitchen because I was the one who cooked
15 for the employees.

16 Q. Did Susanne tell you this?

17 A. I heard her.

18 Q. When did you hear her?

19 A. All the time in my kitchen.

20 Q. You hear her speaking Spanish in your kitchen?

21 A. None of the employees in the kitchen spoke English, all of
22 them spoke Spanish.

23 THE COURT: You really don't -- you have trouble
24 answering questions directly and that troubles me. Okay?

25 THE WITNESS: I understand.

Martinez - cross (Wright)

1 THE COURT: The question was: Did you hear her
2 speaking Spanish in your kitchen?

3 THE WITNESS: Yes.

4 BY MS. WRIGHT:

5 Q. Okay, do you recall submitting in this declaration
6 paragraph five that Susan spoke to you completely in English
7 during the pleating because she does not speak Spanish? Do you
8 see that?

9 A. She understands English. I mean she understands a lot of
10 Spanish and she does speak Spanish.

11 THE COURT: Okay, Mr. Martinez, do you see in
12 paragraph five where it says -- this is your declaration, do
13 you have it there, paragraph five? Do you see where it says
14 she does not speak Spanish? You see that?

15 THE WITNESS: Yes.

16 THE COURT: So you said under oath in your
17 declaration that she does not speak Spanish; is that correct?

18 THE WITNESS: She doesn't speak Spanish but in the
19 kitchen it has to do with vegetables, with food, you know?
20 That's the reason I say that she speaks Spanish. But in the
21 office she never speaks Spanish.

22 MS. WRIGHT: Okay.

23 THE COURT: Okay. Next question.

24 BY MS. WRIGHT:

25 Q. Turn to number 11 on that declaration. The last sentence

Martinez - cross (Wright)

1 where it says that you did not see the contents of her computer
2 screen during the entirety of your meeting; do you see that?

3 A. Yes.

4 Q. So you have no idea what she was filling out or inputting
5 on that computer that day; correct?

6 A. She never asked me for any information and I never ask her
7 anything.

8 Q. Okay I'm going to repeat my question. You have no idea
9 what she was filling out on that computer that day; correct?

10 A. No.

11 THE COURT: It's not correct?

12 THE COURT: You've got to do a better job.

13 MS. WRIGHT: I have to do a better question.

14 Absolutely.

15 BY MS. WRIGHT:

16 Q. Do you know what she was filling out on the computer on
17 that day on that meeting?

18 A. I didn't know.

19 Q. Okay. At no time during the meeting did you see her show
20 you any form is your testimony; correct?

21 A. No.

22 Q. So you did not see?

23 THE COURT: Don't you understand, Ms. Wright.

24 MS. WRIGHT: You can't talk when I'm talking.

25 MS. WRIGHT: Sorry your Honor.

Martinez - cross (Wright)

1 THE COURT: You cannot ask questions when the answer
2 is a double negative and then move on as if you got the answer
3 you wanted, I mean the question was at no time did you see her
4 show you any form, is that your testimony? No.

5 That means she did show him forms and he did see the
6 forms but I don't think that's what you think he means.

7 MS. WRIGHT: No, your Honor.

8 THE COURT: You're making a record here, you see I've
9 got a record, right? What you think is fine, but that's not
10 what it is in the record. In the record it says, yeah, she
11 showed me the forms all right and I knew what she was doing.

12 MS. WRIGHT: Okay.

13 THE COURT: But I don't think that's what you're
14 trying to accomplish here and I'd like the record to be clear.

15 MS. WRIGHT: Absolutely.

16 THE COURT: Let's try to do that.

17 MS. WRIGHT: Absolutely.

18 THE COURT: Let's try to ask questions designed to
19 clarify not OB few skate.

20 MS. WRIGHT: I will rephrase the question.

21 BY MS. WRIGHT:

22 Q. Atfully time during your pleating with Susanne, did you
23 see any of the forms she was filling out on the computer?

24 A. No.

25 Q. Back to your declaration par TKPWRAOEUF, you indicate your

Martinez - cross (Wright)

1 edge HREURB is very limited do you see that?

2 A. That's correct.

3 Q. During your employment at Paramount, you filled out forms
4 that were in English; do you recall?

5 A. Never.

6 Q. You've never, just to clarify you've never put information
7 on any form during the entire time that you were hired by
8 Paramount on forms that were in English?

9 A. With someone who told me what I had to fill out.

10 MS. WRIGHT: At this point, your Honor, I want to
11 pull from the exhibits and I want to make sure that counsel has
12 a copy, exhibit B which is a W four.

13 THE COURT: Now this is an exhibit that's A, B, C, D.
14 They're KPEUPBTS just for the trial or are they exhibits to the
15 motion where are those exactly?

16 MS. WRIGHT: These were documents that we exchanged
17 in advance of this bench trial that we were going to utilize
18 today.

19 THE COURT: So these are trial exhibits.

20 MS. WRIGHT: Yes, your Honor.

21 THE COURT: And I have exhibits A through F.

22 MS. WRIGHT: I will not use all of them.

23 THE COURT: All right. So now that was right).

24 THE COURT: Right now you're using exhibit B.

25 MS. WRIGHT: Yes, your Honor.

Martinez - cross (Wright)

1 THE COURT: You want to show it to him. Does he have
2 it? Could you land it up please so the witness has it?

3 Turn to exhibit B, please. B as in boy. Okay what's
4 your question.

5 BY MS. WRIGHT:

6 Q. Take a look at that document, sir, is any portion of the
7 handwritten sections in your handwriting?

8 A. In my handwriting my signature and the date.

9 Q. So all the handwritten portions at the very bottom of that
10 first page under employee withholding allowance certificate,
11 are you saying that that's all your handwriting?

12 MR. KATZ: Objection that's not what he just
13 testified to.

14 THE COURT: Well, okay. But again you could ask the
15 question better.

16 MS. WRIGHT: Okay.

17 THE COURT: What about the handwriting where it's
18 printed Marco C Martinez and then there's a Social Security
19 number is that your handwriting (In English) that's not my
20 handwriting.

21 THE COURT: Mr. Martinez help me out here, wait for
22 it to be translate if you want me to think you don't speak
23 English it would be better for you to be brutally honest. You
24 see where it says Marco C Martinez with a Social Security
25 number printed out? Whose handwriting is that?

Martinez - cross (Wright)

1 THE WITNESS: I don't remember who filled it out.

2 THE COURT: Is it your handwriting?

3 THE WITNESS: The signature and the date, that's my
4 handwriting. And the numbers there.

5 THE COURT: And the other handwriting is not your
6 handwriting is that that what you're saying?

7 THE WITNESS: Yes.

8 THE COURT: Okay, thank you. Next question.

9 MS. WRIGHT: Sure.

10 BY MS. WRIGHT:

11 Q. Do you know whose handwriting it is writ says Marco C
12 Martinez?

13 A. I don't remember whose it is, I don't remember who wrote
14 it, I don't remember who helped me out.

15 Q. You're saying someone helped you?

16 A. All I remember all I know that that's my signature.

17 Q. My question is you're saying someone helped you fill this
18 out.

19 A. Someone always help me.

20 Q. Do you recall who in this particular situation?

21 A. No, I do not remember.

22 Q. Did the person speak Spanish who assisted you?

23 A. Supposedly, yes.

24 Q. What does that mean, supposedly yes do you know if the
25 person spoke Spanish or not?

Martinez - cross (Wright)

1 A. Because since I speak Spanish, I always look for someone
2 who spoke English.

3 Q. And you don't recall who it was specifically who you
4 looked for who helped you on this occasion you filled this form
5 out?

6 A. ***** ATTEZIONE.

7 A. I do not remember.

8 Q. Is it always the same person you asked for help with
9 forms?

10 THE COURT: This particular form, I'm still a little
11 unclear about this. The person who helped you, I'm asking
12 about the person who helped you did that person help you in
13 Spanish? In other words the person explained the form to you
14 in Spanish or read it to you in Spanish?

15 THE WITNESS: If he read the document?

16 THE COURT: You said a person helped you; correct?

17 THE WITNESS: Okay, yes.

18 THE COURT: Did he help you in Spanish or did he help
19 you in English? How did he help you what language?

20 THE WITNESS: I look for help for -- to fill out. I
21 then they would always tell me sign here.

22 THE COURT: That wasn't my question. Please answer
23 my question. My question is when the person helped you with
24 this did he speak Spanish to you about it when he was helping
25 you or did he speak English when he was helping you?

Martinez - cross (Wright)

1 THE WITNESS: In Spanish.

2 THE COURT: He helped you in Spanish?

3 THE WITNESS: Yes.

4 MS. WRIGHT: Okay.

5 THE COURT: Did the person, withdrawn. Is that your
6 signature there almost TPHRAOER the bottom of the form, do you
7 see that?

8 THE WITNESS: Yes. It is ply signature.

9 THE COURT: And right above it there's some words in
10 English which start out "under penalties of perjury" and
11 there's some additional English there, you see that?

12 THE INTERPRETER: Your Honor he's asking --

13 THE COURT: Where it says under penalties of perjury,
14 can you point that out to him, please? You see that? The.
15 A. I am looking at them but I cannot read them.

16 THE COURT: That's not my question, I'm asking you,
17 do you see those words there, right THR-FPL you see that now?
18 Do you see it? You can see, right?

19 THE WITNESS: Not very well. I need glasses. The
20 print is very small.

21 THE COURT: Go ahead.

22 BY MS. WRIGHT:

23 Q. When you were filling out this particular form, did
24 whoever was helping you explain that you were filling out the
25 information and certifying that it was accurate under penalties

Martinez - cross (Wright)

1 of perjury?

2 A. I don't remember.

3 Q. The date you signed the document is February 19, 2014; do
4 you recall that that was your first day of employment?

5 A. I don't remember.

6 Q. Would you turn to the next document in the batch which is
7 exhibit C, please.

8 THE COURT: Are you offering exhibit B into evidence.

9 MS. WRIGHT: Your Honor at this time I move to offer
10 exhibit B into evidence.

11 THE COURT: Any objection?

12 MR. KATZ: No objection.

13 THE COURT: B is received.

14 (Party Exhibit received in evidence).

15 THE COURT: Before you go on to exhibit C I just have
16 a couple of questions about that pleading with Ms. Wright. The
17 meeting you had with Ms. Wright which you said in your
18 declaration was on or around September 26th, 2016; do you
19 remember what day of the week that was?

20 A. I don't remember.

21 THE COURT: Is the country club open on Mondays?

22 THE WITNESS: Seven days.

23 THE COURT: So there are golfers there that play golf
24 on Mondays?

25 THE WITNESS: Well it was always on Mondays, some of

Martinez - cross (Wright)

1 the people who went to play and they were there and I was in
2 the kitchen, we were always there, open.

3 THE COURT: But was Monday a busy day at the country
4 club? Not all.

5 THE COURT: Not what?

6 THE WITNESS: Not all.

7 THE COURT: Well Saturday and Sunday are very busy am
8 I correct?

9 THE WITNESS: Friday, Saturday and Sunday.

10 THE COURT: What about Monday?

11 THE WITNESS: Monday there are parties the employees,
12 there are parties for all the people, the people who play golf.

13 THE COURT: All right. Anyway, continue, you wanted
14 him to look at exhibit C.

15 MS. WRIGHT: Yes, your Honor. Before I do that, at
16 this point also, your Honor, I want to move to offer the
17 declaration both the English and the Spanish version into
18 evidence.

19 THE COURT: I mean it's already part of the record,
20 but, sure, why not. Why don't we mark that as exhibit G. You
21 don't have a Gar in this pile.

22 MS. WRIGHT: I do but I'm not sure if I'll use it.
23 I'll change it if I do.

24 THE COURT: I only have F, if you have a G I don't
25 have it.

Martinez - cross (Wright)

1 MS. WRIGHT: I Mike not use G. We can use G your
2 Honor, I can change it if I need to.

3 THE COURT: I'm not going to use something you
4 already marked I have A through F. I don't have beyond F. I
5 don't. Maybe there is something beyond F but you didn't give
6 it to me. Okay now you've given additional things to me which
7 I previously did not have. Here let me give it back to you.
8 Let's make it exhibit I, as in identify. So the declaration is
9 now defendant's exhibit I.

10 MS. WRIGHT: Thank you.

11 THE COURT: For identification. You're offering it
12 into evidence.

13 MS. WRIGHT: Yes, your Honor.

14 THE COURT: Any objection.

15 MR. KATZ: No, your Honor.

16 THE COURT: Okay, exhibit I, which is the declaration
17 of Mr. Martinez dated October 26th, 2018, is received.

18 (Party Exhibit received in evidence).

19 THE COURT: Next question.

20 BY MS. WRIGHT:

21 Q. Take a look at exhibit C which is entitled employees
22 withholding allowance certificate. Is that your signature on
23 the document?

24 A. Yes.

25 Q. And at the top where it's handwritten Marco C Martinez and

Martinez - cross (Wright)

1 the address, is that your handwriting?

2 THE INTERPRETER: May the interpreter ask
3 Mr. Martinez to break his answer.

4 A. I only see it's a signature and the date.

5 THE COURT: You only signed the signature. You only
6 wrote the signature and the date is that what you're saying?

7 THE WITNESS: Yes.

8 THE COURT: But there is other handwriting you see at
9 the top of the page there's other handwriting there. Us do you
10 see that?

11 THE WITNESS: Yes.

12 THE COURT: Who wrote that?

13 THE WITNESS: That's my handwriting.

14 THE COURT: You didn't write it?

15 THE WITNESS: No.

16 THE COURT: Who did write it?

17 THE WITNESS: I don't remember.

18 THE COURT: Okay.

19 BY MS. WRIGHT:

20 Q. Looking at exhibit C --

21 THE COURT: Why don't you offer it first before --

22 MS. WRIGHT: Okay I'm going to move to offer exhibit
23 C into evidence.

24 THE COURT: Any objection.

25 MR. KATZ: No -BGS on.

Martinez - cross (Wright)

1 THE COURT: Exhibit C is received.

2 (Party Exhibit received in evidence).

3 THE COURT: TKPWRO ahead.

4 BY MS. WRIGHT:

5 Q. Looking at exhibit C and exhibit B Mr. Martinez, is it
6 fair to say that the same person wrote the portions containing
7 your first, middle name and last name, i.e., Marco C Martinez
8 on both documents?

9 A. Yes.

10 Q. And both documents contain your Social Security number; do
11 you see that?

12 A. Yes.

13 Q. Did you provide this information to the person that
14 TPHEULD out the document?

15 A. He or she wrote it there.

16 Q. The question is did you give them your Social Security
17 number?

18 A. I'm not sure.

19 Q. Do you know where the person would have gotten KWROER
20 Social Security number to write it on that form if you had not
21 given it to them?

22 A. The ones who had it were in the company.

23 Q. Again, February 19, 2014 was the start of your employment
24 with the company; correct?

25 A. Yes.

Martinez - cross (Wright)

1 Q. Look at the Social Security number, is that your Social
2 Security number?

3 A. Yes.

4 Q. Going back to exhibit C right below your signature, did
5 the person who you said assisted you in filling out this form
6 explain to you that if you made any false statement on the form
7 there was a penalty of \$500 that could be imposed?

8 A. Everything is correct.

9 Q. How did you know everything is correct if you don't read
10 English as you testified to?

11 A. Well, everything is correct, my name is correct, my Social
12 Security number is correct.

13 Q. How do you know what the columns were asking for if you
14 don't read English, for instance it says term *E permanent home
15 address, how do you know if that's what that was asking for in
16 exhibit C.

17 MR. KATZ: Objection he never testified he did know
18 what it meant.

19 THE COURT: Sustained. Let's keep going we're a
20 little bogged down. Is Susan WR50EUBG9 going to testify.

21 MS. WRIGHT: Yes, your Honor.

22 THE COURT: I have a feeling we're going to clarify
23 some of this when she testifies.

24 BY MS. WRIGHT:

25 THE COURT: Exhibit D. Can you take a look at

Martinez - cross (Wright)

1 exhibit D in the packet, please?

2 Is that your signature on that document?

3 A. Yes.

4 Q. Do you know what UB were signing when you executed this
5 document?

6 A. No.

7 Q. Are you in the habit of signing documents without
8 understanding what they say?

9 A. Someone read it to me.

10 Q. Who read it to you?

11 A. Whoever gave it to me.

12 Q. Who was that?

13 A. No. I don't know, I don't not remember.

14 Q. Did the person read it to you in English or Spanish?

15 A. In Spanish.

16 Q. Okay, turning now to --

17 MS. WRIGHT: Actually your Honor I am going to move
18 to offer exhibit D into evidence.

19 THE COURT: Any objection?

20 MR. KATZ: D or E you said.

21 THE COURT: D I think she said. Is that right
22 Ms. Wright.

23 MS. WRIGHT: D your Honor, WRES.

24 MR. KATZ: No objection.

25 THE COURT: Exhibit D for David is received.

Martinez - cross (Wright)

1 (Party Exhibit received in evidence).

2 BY MS. WRIGHT:

3 Q. Turning now to Exhibit E, let me know when you have that
4 document -- is your signature anywhere on that document?

5 A. It's here.

6 Q. That's your signature?

7 A. Yes.

8 Q. Is the handwritten portion at the top yours?

9 A. It is not my handwriting.

10 Q. Do you know whose handwriting?

11 A. No.

12 Q. In the middle of the document there's a checkbooks where
13 it says lawful permanent resident number and there's a number.
14 Did you write that in?

15 A. Those numbers are not mine and what I mean is that I did
16 not write them.

17 Q. Okay, is that your permanent, lawful permanent resident
18 alien number?

19 A. I do not know. I have to check it with my lawful
20 permanent residence card which I have here with me.

21 Q. Before you signed the document, did you check to make sure
22 the number that's written there was indeed your permanent
23 resident number?

24 A. I don't remember. Someone always helped me to fill out
25 those papers.

Martinez - cross (Wright)

1 Q. Right below your signature there's a section where it says
2 that I attest under penalty of perjury that the information is
3 correct. Did the person read that to you?

4 A. No.

5 Q. Okay. Where it says the date right next to your
6 signature, did you fill that portion in?

7 A. Yes.

8 Q. So you wrote the date in but you're saying that you did
9 not write in the section where it says lawful permanent
10 resident number?

11 A. Okay.

12 A. They don't seem to be my numbers.

13 Q. At the top where it says date of birth did you write that
14 number in?

15 A. No.

16 Q. Would you agree that the four that's reflected in all
17 three sections, date of birth, lawful permanent resident are
18 alien and where you said you wrote the date in are almost, if
19 not identical.

20 THE INTERPRETER: Would you please read repeat the
21 question.

22 Q. Would you agree that the number fours as reflected in all
23 three section. Lawful permanent resident alien number that you
24 indicated you wrote in are identical.

25 MR. KATZ: Objection asking his opinion on what

Martinez - cross (Wright)

1 things look like is irrelevant.

2 THE COURT: I don't think it's irrelevant and it's
3 perfectly permissible. People can give opinions about
4 handwriting different than other kinds of opinions but when I
5 comes to handwriting a person can be asked, a witness can be
6 asked his opinion I think we're getting bogged down but the
7 numeral four, she said number, she me meant numeral four like
8 your date of birth, you see that? You see that?

9 THE WITNESS: Yes.

10 THE COURT: Do you see the numeral four where after
11 the box that's checked for lawful permanent resident, you see
12 that numeral four in there? You see the numeral four it says
13 zero four.

14 A. Yes.

15 THE COURT: Okay. Then go down to the date. Do you
16 see the number RAL four in that date?

17 A. Yes.

18 THE COURT: Are all three numeral fours the same, in
19 your opinion.

20 A. Well they look quite.

21 THE COURT: They look quite what? EUFRPBLTS yes
22 according to how it's written, they look each other a lot that
23 they're mine.

24 THE COURT: That all four, every time the numeral
25 four is written that's your handwriting?

Martinez - cross (Wright)

1 THE WITNESS: They look a lot like mine.

2 THE COURT: Okay. Next question.

3 MS. WRIGHT: At this point your Honor I'm going to
4 move to admit Exhibit E into evidence.

5 THE COURT: Any objection.

6 MR. KATZ: No objection.

7 THE COURT: Received.

8 (Party Exhibit received in evidence).

9 THE COURT: Go ahead Ms. Wright.

10 MS. WRIGHT: STHR.

11 Q. There's a second page to Exhibit E, K*U just take a quick
12 look at that and tell me if any portion of it is your
13 handwriting?

14 THE INTERPRETER: Excuse plea counselor, what
15 section.

16 THE COURT: Page two. Is any of the handwriting on
17 page two of Exhibit E your handwriting?

18 THE WITNESS: If I recognize the handwriting?

19 BY MS. WRIGHT:

20 Q. Is any portion of the handwritten sections yours?

21 A. Yes.

22 Q. What portions on that document is yours?

23 A. My name.

24 Q. Are we talking about the section at the bottom that's
25 scratched out where it says Martinez?

Martinez - cross (Wright)

1 A. This over here?

2 THE COURT: What does it say.

3 A. What is underlined says Martinez.

4 THE COURT: Sorry not following you. What part of
5 this is your handwriting, that's the question.

6 A. Sir may I show it to you and tell you this, this and that?

7 THE COURT: Sure.

8 THE WITNESS: Marco C this is my handwriting.

9 THE COURT: Okay for the record the witness said that
10 the word Martinez, which is crossed out is his handwriting.

11 MS. WRIGHT: Okay.

12 THE COURT: This is your handwriting here? Right
13 next to it where it says Wright R I G H T is not your
14 handwriting right. (W).

15 A. No it's not mine.

16 THE COURT: Okay, anything else on there that's your
17 handwriting?

18 THE COURT: Your handwriting.

19 THE WITNESS: This here.

20 THE COURT: For the record the witness is pointing to
21 the word "Marco" which is also stricken out, that's your
22 handwriting. That's your handwriting next to it is not your
23 handwriting the of anything else on there you that's your
24 handwriting that you can tell.

25 THE WITNESS: Ply handwriting.

Martinez - cross (Wright)

1 THE COURT: Tell me what it is. We already talked
2 about that. Which one now are you talking about is your
3 handwriting?

4 THE WITNESS: Here, no more.

5 THE COURT: Where it says 60 Sukor Road that's your
6 handwriting?

7 THE WITNESS: No it's not my handwriting.

8 THE COURT: Mr. Martinez, I'm just asking you what is
9 your handwriting, what is your handwriting?

10 THE WITNESS: This, this and this one, the numbers,
11 that's it.

12 (In open court; jury present) and here.

13 THE COURT: Okay the witness pointed to what he had
14 already testified to the word Martinez, which is stricken out.
15 The word Marco, which is stricken out, and then the date, which
16 says, 2/19/14. Which one this one or this one? The one that's
17 stricken out.

18 THE WITNESS: This one.

19 THE COURT: Okay, so the third one is it's hard to
20 read, but it's two something 2014 stricken out under the
21 certification section. For the record he says that's his
22 handwriting I.

23 MS. WRIGHT: Okay.

24 THE COURT: Ask your next question. Let's go.
25

Martinez - cross (Wright)

1 BY MS. WRIGHT:

2 Q. Last question on this form. The Martinez that's stricken
3 out. Take a look at it and go back to the first page of the
4 same document and look at the Martinez there.

5 Q. Would you agree that those both Martinez as written are
6 identical?

7 THE COURT: Might need to help out here. Look at
8 this word here. You see this word that says Martinez? For the
9 record that's on the first page of Exhibit E at the top. You
10 SAOEU that word right there?

11 THE WITNESS: Yes.

12 THE COURT: It says Martinez, right?

13 THE WITNESS: Yes.

14 THE COURT: You see this word right here on the
15 second page which is stricken out but you can see it says
16 Martinez, you see that?

17 THE WITNESS: Martinez.

18 THE COURT: Is your question that that Martinez,
19 meaning the second one I just identified and the first one are
20 the same, is that your question?

21 MS. WRIGHT: Yes, your Honor.

22 THE COURT: So, is this one the same as this one?

23 THE WITNESS: They're not the same.

24 THE COURT: Next question. I think we spent quite
25 enough time on this you're kind of losing plea. Let's move on

Martinez - cross (Wright)

1 to something that actually matters.

2 MS. WRIGHT: I am done with the form.

3 BY MS. WRIGHT:

4 Q. So as you sit here today Mr. Martinez, were there ever any
5 occasion where you served as the translator for the folks at
6 Paramount, including Susan?

7 THE INTERPRETER: Could you please repeat the
8 question, I'm or.

9 MS. WRIGHT: S you sit here today.

10 THE COURT: He's sitting here today. Obviously I can
11 see it he's it ising here.

12 The question is. When you were work willing at the
13 country club did you ever act as a translator for Ms. Wright?

14 A. Repeat, repeat. Who is Wright.

15 THE COURT: Do you know Susan Wright.

16 THE WITNESS: Oh.

17 THE COURT: You see Susan.

18 THE WITNESS: Sure.

19 THE COURT: While you were working at the country
20 club did you act as a translator for Susan?

21 THE WITNESS: Yes.

22 THE COURT: Did you translate her English into
23 Spanish for someone else?

24 A. No in the kitchen. It was about everything I did there
25 depending what I did.

Martinez - cross (Wright)

1 THE COURT: What did you translate?

2 A. I cooked for them. Whenever she asked that she wanted to
3 know what was all that.

4 THE COURT: So she would ask in what language?

5 A. In English.

6 THE COURT: And then you would translate it into
7 Spanish?

8 THE WITNESS: No. She would say what do you cook,
9 what is that and I translated everything.

10 THE COURT: Into what language.

11 A. English.

12 BY MS. WRIGHT:

13 Q. Mr. Martin STPHRAOEUFRLS I don't know what to say.

14 Ms. Wright. Ask your next question.

15 BY MS. WRIGHT:

16 Q. Mr. Martinez, did you ever serve as a TRAPBS lay are to
17 for Susanne where you translated English into Spanish for
18 anyone at Paramount?

19 A. No.

20 Q. Did you serve as a translator translating English into
21 Spanish for Brad black while at Paramount?

22 THE COURT: For who?

23 MS. WRIGHT: Brad black, K Brad black.

24 A. I don't know who that is.

25 MS. WRIGHT: I have no further questions, your Honor.

Martinez - cross (Wright)

1 THE COURT: All right, I have a couple of questions.
2 How long have you lived in the United States?

3 THE WITNESS: I've been living in the United States
4 since '87.

5 THE COURT: Since 1987?

6 THE WITNESS: Yes, that's correct.

7 THE COURT: Where are you from originally?

8 THE WITNESS: Dominican Republic.

9 THE COURT: Before you worked at Paramount, what did
10 you do for a living?

11 A. Cook.

12 THE COURT: How old are you?

13 THE WITNESS: Fifty-nine years old.

14 THE COURT: So you came to the United States when you
15 were approximately 27 years old?

16 THE WITNESS: Exactly, yes, sir.

17 THE COURT: Okay any redirect.

18 MR. KATZ: Your Honor, if I could have one moment to
19 confer with my --

20 THE COURT: Sure.

21 MR. KATZ: Just a few questions your Honor.

22 THE COURT: Sure. Redirect examination by Katz.

23 BY MR. KATZ:

24 Q. Mr. Martinez, do you understand WRORDZ in English when
25 you're working in the kitchen?

Martinez - cross (Wright)

1 A. All of them.

2 Q. When you say all of them is that relating to food and your
3 job?

4 MS. WRIGHT: Objection.

5 THE COURT: What's the basis.

6 MS. WRIGHT: Leading.

7 THE COURT: It's leading I'm going to allow. Get
8 through, this come O.

9 You say you understand all the words in English while
10 you're working in the kitchen is that correct?

11 THE WITNESS: In the kitchen.

12 THE COURT: What do they relate to?

13 THE WITNESS: With everything I use in the kitchen.

14 THE COURT: Food?

15 THE WITNESS: Of course.

16 THE COURT: Tools?

17 THE WITNESS: Of course.

18 THE COURT: Utensils?

19 THE WITNESS: Yes.

20 THE COURT: Okay, next question.

21 BY MR. KATZ:

22 Q. Ms. Wright had asked you, did you ever translate for Susan
23 from English to Spanish; do you recall that question?

24 A. No.

25 Q. Was there ever a time in the kitchen where you would

Martinez - cross (Wright)

1 translate for Susan food words?

2 A. Always.

3 Q. Was there ever any other times you translated for Susan
4 other than the kitchen?

5 A. No.

6 MR. KATZ: No further questions, your Honor.

7 THE COURT: Anything further Ms. Wright?

8 MS. WRIGHT: No, your Honor.

9 THE COURT: Thank you, Mr. Martinez you may step
10 down.

11 (Witness excused)

12 THE COURT: Do you have any other witnesses,
13 Mr. Katz?

14 MR. KATZ: No, your Honor.

15 THE COURT: Okay.

16 MR. KATZ: Plaintiffs rest.

17 THE COURT: Let's take a brief break and we'll start
18 with any witnesses that the defendant would like to call.
19 Okay? Ten minutes.

20 THE CLERK: All rise this court will be in recess.
21 (recess taken) (end recess).

22 THE COURT: Have a seat. All right. Ms. Wright.

23 MS. WRIGHT: Yes, your Honor.

24 THE COURT: So all right Ms. Wright. Are you going
25 to call Wright, right now, Ms. Wright? That was a joke you

center header

1 don't have to put that in the record. Please much it's not
2 your faults, you've got a great name it's just a common name
3 and it can be spelled more than one way, that's all. You know
4 what. Leave it in the record. Now that I see it it's actually
5 pretty good.

6 All kidding aside and by the way, this is a serious
7 matter and no one should think that I think otherwise.
8 Ms. Wright.

9 MS. WRIGHT: Yes, your Honor.

10 THE COURT: Proceed.

11 MS. WRIGHT: Before I proceed, do you want, I'm going
12 to call Mr. Black, but should we let the witnesses go back.

13 THE COURT: Yes, I think so, I think if you're a
14 prospective witness you need to be outside of the courtroom.

15 THE COURT: We'll call you when we need you.

16 MS. WRIGHT: At this time I call Karl Bradley black
17 to the stand.

18 THE COURT: Come on up, sir.

19 witness , having been previously duly sworn,
20 testified further as follows:

21 THE CLERK: Please be seated. Please state your full
22 name for the record, spelling your last name slowly. Karl,
23 Bradley black. B L A C K., K A R L. B R A D L E Y.

24 DIRECT EXAMINATION

25

center header

1 BY MS. WRIGHT:

2 Q. Hello, Mr. Black. What is your current position at
3 Paramount Country Club?

4 A. I have the chief financial officer information.

5 Q. I'm going to refer to it as PC C for brevity going forward.

6 Q. How long have you been CFO. Chief financial officer at PC
7 C?

8 A. Since February of 2010.

9 Q (By The Court) Can I interrupt for one
10 second much was Paramount Country Club previously
11 deal country club?

12 THE WITNESS: Deal wood.

13 THE COURT: Deal wood country club,.

14 THE WITNESS: That is correct.

15 THE COURT: Go ahead.

16 BY THE COURT:

17 Q. What are your duties for SKHAOEUFPLT.

18 A. I am responsible for all accounting and financial aspect
19 of the country club.

20 Q. Do you know Mr. Martinez?

21 A. I do.

22 Q. And how do you know him?

23 A. I was part of the decision-making process when he was on
24 board back in February of 2014 as a kitchen supervisor. That
25 it was a management position so that did involve discussions

center header

1 with myself, the general manager and the executive chef that
2 was bringing him in.

3 Q. And back in September of 2016, did PC C outsource its
4 payroll and other H R services to another company?

5 A. Yes we did.

6 Q. And which company was that?

7 A. Oasis.

8 Q. Do you recall specifically which dates Oasis came to PC C
9 to do the on boarding?

10 A. Yes, strategically we picked Friday, September 23 and
11 Monday September the 26th.

12 Q. And those were the two days they were on-site?

13 A. Yes, ma'am.

14 Q. Did Oasis, was the on boarding held in a specific
15 location?

16 A. Yes, it was in an OEFP room which also held the offices or
17 workstations of Theresa Lyn ski our accounts payable, accounts
18 payable and then Susan Wright our accounts receivable and
19 payroll.

20 Q. Were you present for any portion of the on boarding that
21 was done on those two days?

22 A. A large portion of it in and out. He is.

23 Q. Are you aware whether or not Mr. Martinez was involved in
24 the on boarding that Oasis conducted?

25 A. Yes he had been required to attend an on boarding session

center header

1 with an Oasis employee.

2 Q. Do you recall if September 26th was a date that the
3 country club was open?

4 A. That was a Monday my recollection is we did not have an
5 outing that day. I do recall that Mr. Martinez was unable to
6 attend on the Friday the 23 session because we had several
7 large bank wets starting with Friday night plus Saturday. He
8 lived on property and was available on PHROPB but my
9 recollection is we did not have an outing on that day we were
10 closed for business.

11 Q. On the 26th?

12 A. Yes, ma'am.

13 THE COURT: Is that typical you're closed unless you
14 have an outing.

15 A. Yes we would be closed unless we have an outing on Monday.
16 Late September we have very few.

17 Q. Did you also complete the on boards?

18 A. I did. Yes. All employees had to regardless of their
19 title or role.

20 Q. Do you recall just generally what day did you do your on
21 boarding?

22 A. I did it the first day on Friday the 23.

23 Q. As part of your on boarding were there documents that you
24 also had to complete and execute?

25 A. KWREGS, the electronic on boarding system walked me

center header

1 through very specific identifying information that I had to
2 input and complete which included a I nine, a W four
3 acknowledgment of the Oasis handbook which we had an expanded
4 handbook as well for Paramount for the work site and then also
5 the acknowledgment of an arbitration agreement.

6 Q. And you did that electronically?

7 A. Yes, I had to do it with an Oasis employee as did
8 everybody that was on board because they were responsible for
9 the transition to their platform.

10 THE COURT: Mr. Black, this is not your fault but you
11 tend to speak extremely rapidly.

12 THE WITNESS: My apologies.

13 THE COURT: I just said it's not your fault, you
14 don't have to apologize for that. Nothing to apologize for. I
15 do not accept your apology because it's not something that you
16 need to apologize for, however, having said that, I need to
17 understand exactly what you're saying. It's fine for you to
18 understand it's even fine for Ms. Wright to understand it it's
19 kind of I have. If I don't understand it it goes into the
20 ether somewhere.

21 MS. WRIGHT: Yes.

22 THE COURT: Please try to speak more slowly, just
23 try.

24 THE WITNESS: Certainly.

25 THE COURT: If I interrupt you and ask you to slow

center header

1 down it's not because I'm being critical it's because I need to
2 understand you're saying.

3 THE WITNESS: Understood, year *S yes, sir.

4 THE COURT: All right let me just back up one second.

5 So the bottom line is that you, like every other employee at
6 Paramount had to go through this on board, this so-called on
7 boarding process with an Oasis employee.

8 THE WITNESS: That is correct I.

9 THE COURT: Err.

10 THE COURT: You like everyone else had to fill out
11 forms with the Oasis employee.

12 THE WITNESS: That is correct.

13 THE COURT: Including the arbitration agreement.

14 THE WITNESS: That is correct.

15 THE COURT: I think I've government it. SKR.

16 BY MS. WRIGHT:

17 Q. How many employees conducted the onboarding as far as you
18 recall.

19 A. I don't recall, I know of two right off the top of my
20 head. They may have had some additional, but certainly two.
21 The only one I recall specifically is tar in.

22 Q. Were there Spanish speaking employees who completed the on
23 boarding if you know?

24 A. Yes.

25 Q. What options were made available for those employees?

center header

1 THE COURT: You see at you're doing it. You've
2 TKPW-T to wait till you finishes. Don't rush. We're going to
3 take as much time as we need. Wait for her question to end,
4 pause, answer the question in a deliberate fashion. Not in a
5 quick fashion, you're you don't have to rush.

6 THE WITNESS: Okay.

7 THE COURT: Even though that's your normal speaking
8 style try to not do that's correct okay. All right. I'm
9 sorry. Let's see.

10 THE COURT: Were there Spanish speaking employ geez
11 you see I'm speaking slowly right TPHROU. Were there -PB
12 payroll company EURB speaking employees who completed the on
13 boarding if you know. Your answer yeahs yes and then the next
14 question was, I think, what options were made available for
15 those employees meaning the Spanish speaking employees, go
16 a4ED.

17 THE WITNESS: As part of the electronic portion, the
18 very first page gave you an option to click if you wanted to
19 complete the electronic process through Spanish.

20 Q. Okay.

21 A. In addition to the fact that the Oasis employees also
22 spoke Spanish.

23 Q. What types, just generally, what types of personal
24 information were you required to input while you were doing the
25 on boarding?

center header

1 A. From the start of it it would have been my home address,
2 my Social Security number, then moving into the W four how many
3 dependents I was claiming for tax purposes, and then I also
4 needed my driver's license number and my passport number for
5 the I nine portion of that on boarding process.

6 Q. Okay. During your tenure at PC C, did you have occasion
7 to interact or speak with Mr. Martinez?

8 A. On a very regular basis, yes.

9 Q. And do you speak Spanish?

10 A. Not at all.

11 Q. Do you understand Spanish?

12 A. No, I'm sorry I wish I did but I do not.

13 Q. What language did your conversations with Mr. Martinez
14 occur in?

15 A. They were always in English.

16 Q. What were some of the things you recall speaking to him
17 about?

18 A. You know, most days it was pleasantries as I was
19 progressing through the kitchen. On several occasions it was
20 work related where I was part of conversations with vendors
21 that he was dealing with. We would discuss specific banquet
22 menus but there were several times since he REUFD on property I
23 would be in front of the club close to what we call the night
24 house the employees housing area. We'd have conversations, I
25 remember one very distinctly regarding the bike that he had. I

center header

1 had just bought a similar bike by the same manufacturer. I
2 recall having conversations about his businesses that I think
3 he still owns in the Dominican Republic. About his children.
4 We talked about many things across many spectrums.

5 Q. In any of those conversations, did Mr. Martinez speak
6 Spanish with you?

7 A. Not that I recall.

8 Q. While you were present during the on boarding, did you
9 observe any Oasis employees completing the on boarding for
10 another Paramount employee?

11 A. Absolutely not.

12 Q. Same question, while you were at the on boarding, did you
13 observe any PC C employee completing the on boarding process
14 for any other employees?

15 A. Absolutely not.

16 Q. What safeguards were in place to prevent this from
17 happening?

18 A. From the PC C side we hadn't even been TRAEUPD on the
19 employee TPORGS portion of the on boarding process. That
20 occurred after the employees were on boarded by Oasis. Just
21 the fact that the location of where the on boarding occurred
22 was a wide open space with 8-foot tables. Oasis had under our
23 contract had the responsibilities of the transition and the on
24 boarding so they would observe if we had done anything and vice
25 versa. We would have no purpose in doing that portion of it.

center header

1 It was the beginning of our membership year we were extremely
2 busy Susan and I, because we're ready to process our first
3 cycle billing and there was a gazillion chores on that plate at
4 our time.

5 THE COURT: Which time is this. What timeframe.

6 THE WITNESS: We do our billing at the end September.
7 Our membership runs through October 1 TRO*U September 30th at
8 that time in its TRAPBS PHAEUGS one month further.

9 THE COURT: Okay.

10 Q. What happened to the forms you treated to to on boarding.
11 For instance the arbitration form. What if anything EUFPL a?

12 A. That is retained bio *S Oasis is my understanding.

13 Q. Have you seen yours or any other employees arbitration
14 form since the date of on boarding?

15 A. At that time I have seen one example of it due to this
16 lawsuit.

17 Q. Okay, other than the lawsuit?

18 A. No, I have not seen any of them.

19 MS. WRIGHT: I have no further questions for this
20 witness, your Honor.

21 THE COURT: Okay any KWROS?

22 MR. KATZ: We have no questions, your Honor.

23 THE COURT: Okay. Thank you, sir, you may step down.

24 (Witness excused)

25 THE COURT: Okay call your next witness.

center header

1 MS. WRIGHT: Ply next witness at this time, your
2 Honor, is Susan Wright.

3 THE COURT: Susan Wright. Someone might want to
4 go -- okay you're going to do that, good.

5 witness , having been previously duly sworn,
6 testified further as follows:

7 DIRECT EXAMINATION

8 THE CLERK: Please be seated.

9 THE WITNESS: Thank you.

10 THE CLERK: Please state your full name for the
11 record spilling your last name slowly.

12 THE WITNESS: Susan Wright. W R I G H T.

13 MS. WRIGHT: Thank you your Honor.

14 Q. Ms. Wright what is your can you repeat position at
15 Paramount Country Club?

16 A. Accounts receivable and payroll bookkeeper.

17 Q. Going forward I'll will he refer it as PC C for brevity.
18 Tell me just briefly what your duties are in that capacity?

19 A. I manage member accounts, billing, monthly billing, their
20 statements, I also process the payroll for the company export
21 time card information, put it into another program where I have
22 to, that I can go into manual do things if somebody is out of
23 commission or whatever and I send it into the company, Oasis
24 and they process all the rest of it into checks.

25 Q. How long have you served in this capacity?

center header

1 A. Since 2003. August.

2 THE COURT: Let me just ask you a quick question I
3 think I know the answer but let's put it on the record. Are
4 you related in any way to Ms. Wright the attorney for
5 Paramount.

6 THE WITNESS: No I'm not.

7 THE COURT: Thank you.

8 BY MS. WRIGHT:

9 Q. Do you recall that there came a time when PC C outsourced
10 its payroll and other HR processes to Oasis?

11 A. I'm sorry, I have a hard time HAEUFRLG I've got one good
12 here. Can you repeat the question.

13 MS. WRIGHT: Sure, was there a time PC C outsourced
14 payroll and other processes HR processes to Oasis.

15 A. Yes there was.

16 Q. Do you recall around when this was?

17 A. 2016.

18 Q. What dates did the Oasis on boarding occur?

19 A. September 23 and 26 it flanged the weekend.

20 Q. I'm sorry?

21 A. It flanged a weekend. It was a Friday and a Monday.

22 Q. And what was your role during the on boarding process that
23 Oasis conducted?

24 A. Observing.

25 Q. Did you you yourself undergo on boarding?

center header

1 A. Yes, I did.

2 Q. When did you do yours?

3 A. I did PHRAOEUPB, I believe on that Friday. (mine).

4 Q. Do you recall if there were documents that you signed as
5 part of this process?

6 A. Yes.

7 Q. Did those documents include any employee agreements STPHR?

8 A. Yes.

9 Q. What else do you specifically recall signing?

10 A. The state and federal tax forms, I nine form, the employee
11 acknowledgment form, it wasn't a form you had to sign but you
12 had to fill out your emergency contact information, direct
13 deposit. There might be one or two others the basics were your
14 federal and state forms and your I nine forms that are very
15 important to have and any kind of agreements.

16 Q. The employee acknowledgment form that you completed, did
17 it include an arbitration agreement as well?

18 A. Yes.

19 Q. And was that something that you had to fill out as part of
20 the on boarding?

21 A. I had to sign for it, yes.

22 THE COURT: You had to what, sign for it.

23 THE WITNESS: Yes.

24 THE COURT: How did you sign it?

25 THE WITNESS: It was electronic signature.

center header

1 BY MS. WRIGHT:

2 Q. So, just walk me briefly through the on boarding process,
3 you go into the room and then what happens?

4 A. We sat down with one of the Oasis representatives who sat
5 with me, guided me through, it got me to a portal website where
6 you had to put in a client ID and an inputting number and you
7 started with your personal your Social Security your first name
8 your last name, you also had the option of English or Spanish
9 and then I think at that point you would go to the next steps
10 which were all the other following documents, the state and
11 federal forms, your citizenship you had to -- that wasn't
12 something I think you had to sign for but you had what you were
13 a citizen an alien or what ever the case may be in the I nine
14 information (the acknowledgment, there was another one I think
15 about commute tier taxi think I remember being in there. That
16 was the gist of all of the documents in there that I recall.

17 Q. For the two days that the Oasis on boarding occurred were
18 you present for both of those days?

19 A. Yes.

20 Q. And was there -- actually strike that. Do you know if
21 Mr. Martinez was also on boarded on either of those days?

22 A. I don't recall him at TPHEUZ particular time but yes, I
23 know he was on boarded one of those couple of days.

24 Q. Okay.

25 THE COURT: About how long did it take you to fill

center header

1 out all these forms and sign the forms and that process you
2 described for yourself I'm talking about.

3 A. For me? I ask a lot of questions, so it took me a little
4 while like 20 minutes.

5 THE COURT: How many.

6 A. Twenty minutes I.

7 THE COURT: And you said you were actually in the
8 room for two days when employees were being on board.

9 THE WITNESS: Yes.

10 THE COURT: Why were you there what was your role.

11 THE WITNESS: To observe, to watch what they were
12 doing so it was something that I would eventually be needing to
13 do going forward.

14 THE COURT: In the future.

15 THE WITNESS: In the future.

16 THE COURT: Someone two months later got hired you
17 would do it.

18 THE WITNESS: Yes.

19 THE COURT: Hip TEUFP I can HREU how long, I'm sure
20 it varied much typically how long did it take for a PWHROEU ye
21 to fill out all those forms electronically?

22 THE WITNESS: It could easily take a half an hour.

23 THE COURT: Could it take five minutes?

24 THE WITNESS: Yeah, if they were knew what they were
25 doing a lot of people I'm familiar with have never done this

center header

1 before, not filled out worked documents, you know their tax
2 forms stuff like that. So it could take them a little while,
3 but, yeah, if you knew what you were claiming on your state and
4 federal it could take you just a few minutes to do as well.

5 THE COURT: Okay sorry go ahead Ms. Wright.

6 MS. WRIGHT: Thank you.

7 BY MS. WRIGHT:

8 Q. Did the Oasis person on-site give any kind of explanation
9 for introduction before the on boarding began?

10 THE WITNESS: I don't recall but I'm sure that they
11 did. I know they didn't just come in and sit down and we sat
12 down with them like you know a conveyor belt type thing. There
13 was definitely a lot of conversation a lot of communication
14 going on. He it was a busy heck tech couple of days in there,
15 it was crazy and there was a lot of talk going O.

16 Q. Are you aware that Mr. Martinez is claiming that he met
17 with you on September 26 and that this was at least a week
18 after Oasis had been on-site?

19 THE COURT: Wait, wait, wait, wait. Did he say that?
20 I don't recall him saying that.

21 MS. WRIGHT: Yes, your Honor.

22 THE COURT: First of all he said he wasn't exactly
23 sure then you refreshed his recollection.

24 MS. WRIGHT: And he said it was at least a week maybe
25 two weeks after Oasis came on that he met with Susan.

center header

1 THE COURT: Oh that he met with Susan.

2 MS. WRIGHT: Yes.

3 THE COURT: First he was there for the Oasis and then
4 a week or two later he met with Susan.

5 MS. WRIGHT: That's what he said.

6 THE COURT: All right. I don't remember that
7 specifically, I thought you were saying that -- never mind what
8 I thought.

9 MS. WRIGHT: It's okay.

10 THE COURT: Okay. Ask the question again.

11 MS. WRIGHT: Sure.

12 Q. Are you aware that Mr. Martinez is saying on September 26,
13 when he met with you and that was a week or two after the Oasis
14 persons had come on-site?

15 A. I'm aware he said something to that effect, yes.

16 Q. Did you complete any of the on boarding process for
17 Mr. Martinez?

18 A. No, I did not.

19 Q. Did you fill out any of the forms for Mr. Martinez?

20 A. No, I did not.

21 Q. Was there any occasion where you met with Mr. Martinez
22 while the on boarding was taking place where you were inputting
23 his information in the computer?

24 A. I don't remember him, I don't remember him at all. I
25 don't remember meeting with anybody.

center header

1 Q. Would you have -- did you complete the on boarding for any
2 PC C employee?

3 A. No, I did not.

4 Q. Did you complete the I don't know boarding when I same
5 come input the on boarding information for any employee either
6 on the 23 or on the 26th?

7 A. No, I did not.

8 Q. Did you sign or fill out the employee acknowledgment form
9 for any PC C employee at any time?

10 A. No, I did not.

11 MS. WRIGHT: I'm almost done, your Honor.

12 THE COURT: The employee acknowledgment form an is
13 that the arbitration agreement?

14 MS. WRIGHT: Yes, your Honor.

15 THE COURT: Let's just identify so we're clear on
16 this. Do you have the exhibits in front of you?

17 THE WITNESS: I do have stuff here.

18 THE COURT: It's Exhibit A.

19 THE COURT: Look at Exhibit A if you don't mind it's
20 got a tab. (that was Wright).

21 THE WITNESS: Yes.

22 THE COURT: It has Mr. Martinez's name printed on the
23 bottom. On the top it says employee acknowledgments you see
24 that.

25 A. Yes.

center header

1 THE COURT: The third paragraph talks about legal
2 disputes with my work cite employee and WHRAPS in those
3 situations and so forth you see all that?

4 THE WITNESS: Uh-hum.

5 THE COURT: This is the owe so-called employee
6 acknowledgment form that you also filled out.

7 A. Yes.

8 THE COURT: And you signed it yourself personally.

9 THE WITNESS: Yes.

10 THE COURT: Did you have anything to do with
11 Mr. Martinez filling out this form?

12 THE WITNESS: No, I did not.

13 THE COURT: Okay.

14 THE WITNESS: All right.

15 BY MS. WRIGHT:

16 Q. May I continue?

17 THE COURT: Sure.

18 BY MS. WRIGHT:

19 Q. Ms. Wright. To your knowledge does Mr. Martinez
20 understand English?

21 A. Yes.

22 Q. How do you know?

23 A. I've spoken to him.

24 Q. Give me some of the occasions or examples when you've
25 spoken to him in English?

center header

1 A. Besides just greeting him daily in the kitchen because
2 that's where the employees are allowed to go and get their
3 cough fees so I would see him ATD least three times a week he'd
4 have days off during the week I'd be there. I'd see three
5 times a week, good morning how you doing, what are you making
6 what's the employee PHRAOEL but specifically when he started I
7 needed a letter from his insurance company the dental stating
8 that he was no longer covered by his former employee's dental
9 so that he could get on your dental plan, that's how the
10 insurance companies work they're not going to pick you up until
11 they know you've been terminated from your previous employer's
12 coverage and I had many conversations with him about that and
13 not to his fault it WRAEPBT happening -PBG I think who he was
14 speaking to kept dropping the ball I know I had several
15 conversations you've got to get this letter. We've got to get
16 you on the insurance. We've got to get it sooner than later
17 time is running out. I had those conversations with him,
18 excuse me, I remember his injured his beginning gear and I had
19 to get the (finger) I had to get the details of the injury of
20 what happened so I remember him telling me what happened to his
21 finger, because I have to do the insurance documentation to
22 send in to our worker's comp, get him a ride to the hospital,
23 one of the co-workers brought him down, I remember talking to
24 him about that and I actually wanted to see what happened to
25 him. It looked like a terrible injury I wanted to see what

Angela O'Donnell, RPR, 914-390-4025

center header

1 happened, I talked to him about that and the last thing I
2 remember was and this happened a few times at least a couple of
3 times I needed him to interpret to another employee how to use,
4 at the time it was ADP, a hand scanner, you had to place your
5 hand on the scanner so it would take a picture of the outline
6 of your hand, it had to be done a specific way, had to be done
7 three times, we had to read the reading was saying in case it
8 wasn't working we had to do it again, and he was very helpful
9 with me in getting across to the employee -- hold it you're
10 doing it wrong you've got to put your hand this way what ever.
11 We've we have to do it again you've got to put your number N he
12 definitely helped me. I specifically remember one occasion
13 when he helped me get somebody on to the hand scanner to
14 interpret.

15 Q. All those conversations were in English?

16 A. Yes.

17 Q. Do you speak Spanish?

18 A. No, I don't.

19 Q. Do you understand Spanish?

20 A. Other than a greeting OL la and *adios*, no.

21 Q. *R?

22 THE COURT: When he was helping you with other
23 employees wags he helping you in the sense of translating your
24 instructions in English into Spanish for Spanish speaking
25 employees is a that what you're talking about.

center header

1 A. Yes.

2 THE COURT: Are there a lot of Spanish speaking
3 employees in the kitchen.

4 A. Yes.

5 THE COURT: All of them.

6 THE WITNESS: Not all of them.

7 THE COURT: A lot of are.

8 THE WITNESS: A lot are, yes.

9 THE COURT: Mr. Martinez helped you communicate with
10 them. You don't speak Spanish they don't speak English.

11 A. Exactly.

12 THE COURT: He was the translator.

13 A. Yes.

14 Q. Do you recall what month and year Mr. Martinez was hired?

15 A. I remember the issues with the letters in March of 14 I
16 would say around that time we wanted to get him on the
17 insurance.

18 Q. Did he have to submit forms --

19 A. Yeah, there would have been forms he would have had to
20 fill out. It would have been for the dental and a medical form
21 also.

22 Q. Would that have been done with you or someone else.

23 Q. It would have been done with me. It could have been a
24 form handed maybe by my boss Brad he had to he fill out. But
25 it needed to be splitted to us.

center header

1 Q. Do you specifically filling out of those forms out?

2 A. I don't specifically remember sitting watching him fill it
3 out. I know that what looked like his handwriting we did get
4 throws forms back. STKPWHR* *FR.

5 BY THE COURT:

6 Q. Can you take a look at what has been marked as Exhibit E
7 in the packet that's right there. It's the I nine form?

8 A. Oh, yeah, okay.

9 Q. Flip to the first page. Do you know whose handwriting
10 that is where it says employee information and attest TAEUGS?

11 A. I for TKPW-T my blahs easy can read that part.

12 THE COURT: Everybody's forgetting their glasses
13 today.

14 A. I had them I think they're in my baggy can read it enough.
15 I see what I'm looking at.

16 THE COURT: I'm not sure you answer defendant
17 question. The question do you know whose handwriting that is
18 where it says employee information and attest TAEUGS section
19 one.

20 THE WITNESS: I believe that is his handwriting
21 because it's not mine.

22 Q. Other than the fact that it's not yours, do you know for
23 sure if it's his handwriting?

24 A. It would -- in all likelihood. I don't remember him
25 filling this out. But yes, it looks like his handwriting,

center header

1 because I've seen his signature before that's his signature
2 also.

3 Q. What about the handwriting, have you seen his handwriting
4 before?

5 A. I've seen it on other documents, yes.

6 Q. And does that look like his handwriting?

7 A. Yeah.

8 Q. Next page, where it says certification on that same
9 document?

10 A. Yes.

11 Q. There is a name written and scratched outright next to
12 where it says right?

13 A. Yes.

14 Q. Is any portion if that section your handwriting?

15 A. Where it's rewritten it's my handwriting.

16 Q. Where it's rewritten right?

17 A. Where it says Wright and Susan and the other parts are my
18 handwriting.

19 Q. Where it's scratched out where Martinez and Marco is
20 scratch out whose handwriting?

21 THE WITNESS: That's his handwriting.

22 Q. Where it says the business or organization address, whose
23 handwriting is that?

24 A. The 60 suck correspondence road that's mine.

25 Q. And where it says the date at the top. First day of

center header

1 employment. (Zukor (it's scratched out?

2 A. It's scratched out that's his handwriting.

3 Q. Where it's rewritten?

4 A. That's my handwriting.

5 Q. Were there any other occasions you have not mentioned
6 where you heard or saw or heard actually Mr. Martinez speaking
7 English?

8 A. Not specifically that I recall, I know that I definitely
9 always I do with all of the kitchen staff, whenever they're
10 making something and I'm not familiar with what it is I want to
11 know what it is. What are you making why are we having this
12 for lunch. Why are you PHRAEUBGing this. Can we get something
13 for the employee PHRAOEL I know I had a lot of throws
14 conversation -FRS with him. Just friendly banter.

15 THE COURT: Ms. Wright. Attorney right just wait a
16 second.

17 MS. WRIGHT: Sure.

18 THE COURT: Ms. Wright I think you said on the second
19 page PWR it says 60 Zukor road you said that's your
20 handwriting.

21 THE WITNESS: The 60 Zukor road.

22 THE COURT: You see the Z has a cross hatch.

23 THE WITNESS: Yeah that's mean.

24 THE COURT: The K is a capital K.

25 THE WITNESS: I yes.

center header

1 THE COURT: The K is the K. That's your handwriting.

2 A. Yes.

3 THE COURT: Look on the IRS if TPAEUPBLG at the top.

4 THE WITNESS: That's me writing in his address.

5 Sixty Zukor road that's my handwriting just the address part.

6 New City, New York.

7 THE COURT: So the address, the 60 Zukor road that's
8 the country club's address.

9 THE WITNESS: Yeah, because, and I'm just
10 speculating, but he didn't always live at the country club, he
11 lived elsewhere, so there was probably a question as to what he
12 was going to use as his address. Once he established he was
13 going to be living on country club property, it may have been
14 something that was filled out after the fact when he was done.

15 THE COURT: So the first line, this is Martinez Marco
16 that's not your handwriting.

17 THE WITNESS: Correct.

18 THE COURT: The third line which has a date of birth
19 and a Social Security number is not your handwriting.

20 THE WITNESS: Correct.

21 THE COURT: But the second line,.

22 THE WITNESS: Is my handwriting.

23 THE COURT: Wait wait till I finish.

24 But the second line. Sixty Zukor road New City, New
25 York 10956, that is your handwriting.

center header

1 THE WITNESS: Correct. STKPWHRAEUFRPBLGS moving down
2 the page where it has a handwritten A number. Alien
3 registration number. Zero forty-one et cetera, is that your
4 handwriting?

5 THE WITNESS: No.

6 THE COURT: And then the signature down below there
7 and the date are either of those your handwriting?

8 THE WITNESS: No.

9 THE COURT: So did you fill in the parts that you
10 filled out, in other words, the address, after Mr. Martinez had
11 filled out his name and birth date and Social Security number
12 and the other number on there.

13 THE WITNESS: I don't know if it was after, he may
14 not have even. A lot of people don't know how to spell the
15 name Zukor, I don't know when that was filled out. He may not,
16 he may have been in transition at that point waiting for a room
17 to be available, I honestly don't know why it's filled out, I
18 know, I speculate why it's filled out separately but I don't
19 remember when it was done.

20 THE COURT: On the second page where the Martinez and
21 Marco are crossed out.

22 THE WITNESS: Yes.

23 THE COURT: Then Wright and Susanne and are written
24 in. Can you TKROS cross out Martinez and Marco.

25 THE WITNESS: Yes, I did.

center header

1 THE COURT: Is that because this was information for
2 the.

3 THE WITNESS: Verify year.

4 THE COURT: For the employer not the employer to fill
5 out.

6 THE WITNESS: Correct.

7 THE COURT: At least that was your understanding of
8 it STPHR.

9 THE WITNESS: Yes.

10 THE COURT: But Martinez Marco was written by
11 Mr. Martinez.

12 THE WITNESS: Yes.

13 THE COURT: You realized it WALGSZ wrong you wrote
14 Wright, Susan.

15 THE WITNESS: Exactly.

16 THE COURT: I've got it. PHAO*U. UFRPBLTS move on.
17 Q. The last question, the the very top. The Marco Martinez
18 Cabrera.

19 A. Yes that's my handwriting copying it off his permanent
20 resident car.

21 MS. WRIGHT: I have no further questions for this
22 witness your Honor.

23 THE COURT: Any cross.

24 MR. KATZ: Yes, one second your Honor.

25 THE COURT: Before you even SKR the cross you may

center header

1 have asked this question, Ms. Wright. The attorney, if you did
2 I missed it. When you were doing, when the employees of the
3 country club are doing the on boarding process with Oasis, you
4 testified that they were there to provide assistance but that
5 you at least you did all of the reviewing of documents on the
6 computer and filling them out and E signature you did that
7 yourself.

8 THE WITNESS: For me.

9 THE COURT: For you.

10 THE WITNESS: Yes.

11 THE COURT: Did they do it for any employees or
12 because you were there for two days right.

13 THE WITNESS: Not that I saw. Nope.

14 THE COURT: So what were they doing exactly?

15 THE WITNESS: We had about 100 employees, so we had
16 them backed out in the hallway. They were taking care of other
17 employees.

18 THE COURT: So let's say not Mr. Martinez but just
19 some generic employee other than yourself and other than
20 Mr. Martinez they're kind of coming in, doing what they have to
21 do and going back out.

22 THE WITNESS: Yes.

23 THE COURT: How many different computer are being
24 used is it one come you the punitive damages tier.

25 THE WITNESS: No, no. I don't recall. I think it

center header

1 was four or six.

2 THE COURT: So there were a lot of different sort of
3 workstations EUFRPBLTS I'd say there wear at least four just
4 don't remember.

5 THE COURT: Controlled chaos was being overseen by
6 the Oasis employees.

7 THE WITNESS: Yes.

8 THE COURT: This hypothetical. This generic
9 employees comes in can you just describe me would Oasis say
10 this is where you have to sit and sort of get them started but
11 then from there let them do it.

12 THE WITNESS: No the Oasis personnel people were
13 there the entire time. They didn't leave my side when I was
14 oasis boarding. They really couldn't, because there was, they
15 had to be there for questions and they were, they were very
16 helpful and like me, I asked a lot of questions. So they were
17 there I'd say from start to finish, I mean there were a couple
18 of times where I left the room I had other job duties to do.
19 Go to the bathroom what ever, I would pass that table when I
20 went to my work area and they have were always there. There
21 was never TPHREUB sitting there on a computer not getting help
22 from an Oasis employee.

23 THE COURT: I understand that. But I have a slightly
24 different question.

25 THE WITNESS: Okay.

center header

1 THE COURT: Did you ever observe, I know you said
2 this didn't happen with you, but did you ever observe another
3 employee utilize the Oasis employee to fill out the forms? In
4 other words, the PC C employee says, well, gist fill it out for
5 me or here's the information.

6 THE WITNESS: No.

7 THE COURT: You can put it in there. Here's what I
8 want you to say or anything of that nature you see what I'm
9 saying?

10 THE WITNESS: Yes.

11 THE COURT: Utilizing them to actually fill out the
12 forms EURPBLGTS no, I did not see any of that and.

13 THE COURT: How about the Spanish speaking employees.
14 Not Mr. Martin he is. In your view Mr. Martinez spoke pretty
15 good English even though his native language is Spanish.
16 Correct. Obviously his native HRAPBG WAEUPBL is swan EURB.

17 THE WITNESS: That may be. I can't say what it is or
18 not. Obviously you hear him you hear an accent it was never
19 confirmed anywhere. Never told to me.

20 THE COURT: He speaks Spanish no question about that.
21 In fact you utilized him to speak Spanish to the employees
22 EUFRPBLTS yes.

23 THE COURT: -- who didn't speak inHREURB, you have to
24 say yes or no, you can't flood your head.

25 THE WITNESS: I'm sorry, yeah yes, I realized that

center header

1 that may be his first language because he did speak both
2 languages -T.

3 THE COURT: APBL you know that because sometimes you
4 would speak to him in English.

5 THE WITNESS: Yes.

6 THE COURT: He would translate it into Spanish.

7 THE WITNESS: Correct.

8 THE COURT: For the non English speaking employees
9 and then he would translate their Spanish responses into
10 English for your benefit clearly he spoke Spanish.

11 THE WITNESS: No, no I can't say for sure. I don't
12 know what his heritage that's his first language I go by
13 documentation I have to.

14 THE COURT: I'm with you so far. I'm trying to find
15 out. There were definitely employees there who don't speak
16 English or speak it very poorly is that correct.

17 A. Yes.

18 THE COURT: You flow that because you had to use
19 Mr. Martinez as as translator.

20 THE WITNESS: Yes.

21 THE COURT: When those employees were filling out the
22 forms electronically, what level of assistance do you remember
23 them getting from the Oasis employees?

24 THE WITNESS: Span I can speaking Oasis person.

25 THE COURT: Who would do what?

center header

1 THE WITNESS: Who would do the same thing with them,
2 guide them but in their language in the Spanish language.

3 THE COURT: But not fill out the forms for them.

4 THE WITNESS: No, not fill out the forms. No.

5 THE COURT: Just be there to answer questions and
6 sort of point them in the right direction EUFRPBLTS yes.

7 THE COURT: But the form filling is done by the
8 employees whether it's English or Spanish.

9 THE WITNESS: Yes.

10 THE COURT: Okay.

11 MS. WRIGHT: I am done. I just wanted to move to
12 offer Exhibit A into evidence.

13 THE COURT: Which one. On clerk KHR-RBG A.

14 THE COURT: As in apple.

15 MS. WRIGHT: Yes, your Honor.

16 THE COURT: That's a pretty important document, I
17 suppose. Any objection to that?

18 MR. KATZ: No, your Honor.

19 THE COURT: So let's just see Exhibit A is received.
20 Okay. You know while we're on the subject. You didn't show
21 her Exhibit F #, I don't think, but Exhibit F at least appears
22 to be something dealing with dental insurance which she did
23 testify about.

24 MS. WRIGHT: Oh, sure.

25 THE COURT: Would you look at Exhibit F for a moment.

center header

1 THE WITNESS: Yes.

2 THE COURT: Do you know what this is? EUFRPBLTS yes.

3 THE COURT: What sit EUFRPBLTS it's a dental
4 application dental insurance.

5 THE COURT: For whom?

6 THE WITNESS: For Marco C quo.

7 THE COURT: Did you have anything to do with
8 completing this document?

9 THE WITNESS: I gave it to him to fill out, but I
10 didn't, this isn't my handwriting.

11 THE COURT: So you remember, you talked about this
12 dental insurance thing where you had to cancel the other one
13 EUFRPBLT yes.

14 THE COURT: In order to get yours or get the one
15 provided by you.

16 THE WITNESS: Correct.

17 THE COURT: Is this the form he had to fill out
18 EUFRPBLTS yes.

19 THE COURT: -- for your dental insurer, guardian.

20 THE WITNESS: Yes.

21 THE COURT: So you gave him the form.

22 THE WITNESS: Yes.

23 THE COURT: But he filled it out EUFRPBLTS I probably
24 checked off, I can't really read it. I know a lot of employees
25 had a question about unwith of the sections T-PD.

center header

1 THE WITNESS: Section three, nobody knew whether it
2 was indemnity PP L. Even I had to ask my boss, what are we
3 again a PPO. I checked that I probably collected while I was
4 at it I checked new employee add employee.

5 THE COURT: But then the rest of it is in
6 Mr. Martinez's handwriting.

7 THE WITNESS: Correct.

8 THE COURT: Including you see that Z there by the
9 way.

10 THE WITNESS: Oh yes.

11 THE COURT: Zukor road that's cross hatched.

12 THE WITNESS: You do that too.

13 THE WITNESS: Yeah it's interesting. I don't know
14 whether you want to offer Exhibit F into evidence or not or
15 whether you were going to do it with an another PROEU ye.

16 MS. WRIGHT: I can offer it into evidence at this
17 time your Honor. I do intend to offer it.

18 MR. KATZ: No objection.

19 THE COURT: I don't think it was a great deal of
20 relevance, but I'll receive it. Exhibit F is received and also
21 Exhibit A which is the employee
22 acknowledgmentsrcertifyqrcertifyqrcertifyq form is also
23 received. **** ATTENZIONE **** ATTENZIONE **** ATTENZIONE ****
24 ATTENZIONE.

25 (Party Exhibit received in evidence).

center header

1 THE COURT: Okay, Mr. Katz.

2 MR. KATZ: Thank you, your Honor. Direct
3 examination.

4 CROSS EXAMINATION

5 BY MR. KATZ:

6 Q. TKPWAO*RPB?

7 A. TKPWAO*RPB.

8 Q. In preparation for this testimony did you review the
9 declaration of Marco Martinez that was submit inned the court
10 papers?

11 A. Yes, I did review it.

12 Q. And in your answers to your attorney, you stated that you
13 were aware that Mr. Martinez is claim TKHAG he met with Oasis
14 two weeks before he met with you; correct?

15 A. Yes.

16 Q. During the break after Mr. Martinez testified here, did
17 Mr. Black discuss Mr. Martinez's testimony with you?

18 A. Can you repeat the question, please I can't hear you. I'm
19 sorry.

20 THE COURT: I have that problem too. Come on
21 Mr. Katz. Look how big this room is.

22 THE WITNESS: I don't hear on this either.

23 MR. KATZ: Sorry I thought the microphone did it. On
24 a break from testimony after Mr. Martinez testified today did
25 Mr. Black discuss Mr. Martinez's testimony with you.

center header

1 A. No, I didn't see him.

2 Q. On the break after Mr. Martinez testified, did either of
3 your attorneys without telling me what they said discuss
4 Mr. Martinez's testimony with you?

5 A. No.

6 Q. I would ask the witness be shown Mr. Martinez's
7 declaration, which I believe is in evidence.

8 THE COURT: Well, you can show it to her. It's
9 exhibit I.

10 Q. If you could review, I believe it's about three pages,
11 that document and tell me when you're done?

12 A. Review what pages now?

13 Q. The entire thing.

14 THE COURT: Come on Mr. Katz. Direct her to what it
15 is you want.

16 A. Ply thing kind of crapped out too.

17 Q. What it is is what's not in it that's the problem. What
18 it is is what's not in there I need the her to look at I?

19 THE COURT: Why don't you just ask the question.

20 BY MR. KATZ:

21 Q. Can you point to me wherein there Mr. Martinez testifies
22 that he met with Oasis prior to meeting with you?

23 A. What am I looking for again.

24 Q. Point to me which paragraph or paragraphs in this document
25 Mr. Martinez said that he met with Oasis prior to meeting with

center header

1 you?

2 A. I don't remember reading that, seeing that anywhere.

3 Q. Being HRAO being at it now, do you see. In there?

4 A. If you're asking me to read this I'm going to need a few
5 minutes.

6 THE COURT: Are you representing that that specific
7 statement is not in there Mr. Katz I accept that if that's your
8 representation.

9 MR. KATZ: Yes.

10 THE COURT: I'm not sure I'm not sure the point is.
11 Anyway it's not there. There's nothing in there Mr. Oasis
12 first two weeks later Susan Wright is that what your question
13 is.

14 A. Yes.

15 THE COURT: Next question. Show that's all I have
16 your Honor.

17 THE COURT: Since this is a non jury case, I'm
18 curious what's the relevance of that so I understand.

19 MR. KATZ: The relevance is she testified prior she
20 knew this and the only way she would know it from today that
21 she did not witness because she was not in the room and she
22 said neither the other three people who are on her behalf spoke
23 to her about a Mr. Martinez testimony.

24 THE COURT: I'm mystified. You asked the questions
25 that Mr. Katz is referring.

center header

1 MS. WRIGHT: My specific question was.

2 THE COURT: Tell 3450E what it was.

3 MS. WRIGHT: Are you aware he is saying he met with
4 you on the 26th which was two weeks after up to two weeks after
5 the Oasis folks were there. I didn't say anything about where
6 that information came from.

7 MR. KATZ: She said I believe the question was that
8 Mr. Martinez alleges that he met with you two weeks after he
9 met with Oasis.

10 MS. WRIGHT: On the 24th 26th I specifically
11 referenced the 26th you can read back my question.

12 MR. KATZ: I TKPWA*ED guess we need to read back the
13 question STKPWRAO I'm still confused.

14 THE COURT: Hold on, Mr. Katz. I'm confused I want
15 to deconfuse myself.

16 You asked the question. You have notes, so you
17 probably know what your question was.

18 MS. WRIGHT: Yes.

19 THE COURT: You asked the question about this
20 differential in timeframe, I don't remember what the question
21 was. The answer, I believe was that Susan Wright was aware
22 that Mr. Martinez is saying, in some way, that he met with her
23 on the 26th approximately two weeks after he met with Oasis.

24 Was that gist of your question?

25 MS. WRIGHT: My question had to do with what you said

center header

1 and I can't recall if her response was that she's aware that
2 he's saying he met with her on the 26th. I don't remember what
3 her complete answer was. But my question specifically
4 incorporated the 26th and 2 weeks after -- at least --

5 THE WITNESS: The two weeks threw me off.

6 THE COURT: Wait, Susan Wright, please.

7 Nancy Wright has got the floor right now.

8 MS. WRIGHT: I don't know if I said at least two
9 weeks, but there was a reference to the two-week time period I
10 remember you asked me if he said that and I said yes. He said
11 it was at least a week, maybe more after.

12 THE COURT: After what?

13 MS. WRIGHT: After meeting with Oasis that he met
14 with Susanne and that it was on the 26th -- Susan, and that it
15 was on September 26th. And I can't remember how I phrased it.

16 THE COURT: Honestly, I still don't get it. I really
17 don't.

18 MR. KATZ: May I just --

19 THE COURT: I don't. Sorry, but go ahead.

20 MR. KATZ: I believe the question related to whether
21 Mr. Martinez claimed he met with Ms. Wright on the stand, the
22 witness, two weeks after he met with Oasis. She claimed
23 Ms. Wright, Susan Wright, claimed that she was aware that he
24 claims that.

25 THE COURT: Let's clarify that. Do you --

center header

1 THE WITNESS: I'm confused.

2 THE COURT: Maybe there was some lack of
3 clarification.

4 But are you aware that Mr. Martinez is claiming, this
5 is a loaded question because I don't know what you're aware of,
6 but are you aware that Mr. Martinez is claiming? I'm not
7 saying that he is claiming this, so are you aware that
8 Mr. Martinez is claiming that he met with you two weeks after
9 he met with Oasis?

10 THE WITNESS: I was not aware of that.

11 THE COURT: I'm still not sure what you're referring
12 to, Mr. Katz. I apologize. I just don't. I'm missing it.
13 I'm not saying you don't have it. I just -- I don't have it.

14 MR. KATZ: To me that's a different answer than what
15 she said before and what she said before --

16 THE WITNESS: I'm only aware --

17 THE COURT: Witness Wright, please. Hold on a
18 second.

19 MR. KATZ: This answer would not have led to those
20 questions. The answer help gave before he was aware he was
21 claiming that. It's -T no near declaration. She said she did
22 not speak to these employee information. We calls into
23 credibility what happened in the interim. How is he Sixty
24 Zukor wear of those claims if these lying now saying they did
25 not speak or she answered what ever she thinks were attorney is

center header

1 asking her.

2 THE COURT: What did Mr. Martinez say to direct about
3 this. Of.

4 MR. KATZ: He said he met with Oasis and depending
5 which question after that at least two weeks after he met with
6 Ms. Wright.

7 THE COURT: My notes say that he doesn't remember the
8 date of meeting with Ms. Wright, meaning Susan Wright but it
9 was more than one week and more or less two weeks later.

10 MS. WRIGHT: He said.

11 THE COURT: Later meaning later after he met with
12 Oasis.

13 MS. WRIGHT: Yes and we refreshed his recollection he
14 said he met with Susan on the 26th. I incorporated that date
15 into the question I asked her using the declaration.

16 THE COURT: But the declaration doesn't say anything
17 about this advertise distinction between meeting with Oasis
18 and --

19 MS. WRIGHT: The declaration says his meeting with
20 Susan occurred on the 26th and that's the part of it that I
21 incorporated which would have meant that the meeting with Oasis
22 would have been two weeks before the 26th.

23 THE COURT: All right any event, Ms. Wright. Just so
24 we get KWROURTS answer clearly, did you speak to either your
25 attorneys or I should say Paramount's attorneys or to Mr. Black

center header

1 before you testified today about what Mr. Martinez testified
2 to?

3 THE WITNESS: I saw his declaration.

4 THE COURT: I'm talking about his testimony today
5 here.

6 THE WITNESS: , on *E oh, no, no.

7 THE COURT: Definite MRI did not.

8 THE WITNESS: Definitely did not.

9 THE COURT: Didn't speak to Ms. Wright, meaning
10 Attorney Wright and didn't speak to Mr. Black.

11 THE WITNESS: Nope.

12 THE COURT: Good, we got your clear answer and
13 obviously I'm the finder of fact, so I'll decide whether it's
14 credible or not.

15 Anyway. I think you were.

16 MR. KATZ: I had no further questions after that.

17 THE COURT: That's the only question you have.

18 MR. KATZ: Yes.

19 THE COURT: All right. Any redirect.

20 MS. WRIGHT: None your Honor.

21 THE COURT: Okay, thank you very much ma'am you can
22 step down.

23 THE WITNESS: I'm done.

24 MS. WRIGHT: Yes.

25 THE COURT: Yes you are.

center header

1 THE WITNESS: Thank you for the glasses.

2 THE CLERK: You're welcome.

3 THE COURT: You can stay in the courtroom or leave
4 it's entirely up to you. Witness excused).

5 THE COURT: Let's see it's quarter to one. You have
6 one more witness, I think. Right.

7 MS. WRIGHT: Yes, your Honor.

8 THE COURT: How long do you think the witness is
9 going to take.

10 MS. WRIGHT: Probably the staple. Twenty minutes,
11 not more.

12 THE COURT: Well that's good, but I think we're going
13 to have to take a break. I actually have a lunch engagement
14 and you know we're doing fine but I think we're going to have
15 to take a break, in a per if he can world we would finish,
16 we're going to break until 215.

17 MS. WRIGHT: Okay.

18 THE COURT: We have something.

19 THE COURT: That should work, I have something else I
20 have to do at 330 in court another matter so if we reconvene at
21 215.

22 THE CLERK: Judge let me check the time. I have
23 something at 330. I think if we recon cleaned at 215. Let's
24 make it 230. Okay? I'm sorry I just got so many different
25 things going on. We'll reconvene at 230. We have one more

center header

1 witness and we're done. Right.

2 MS. WRIGHT: Yes, your Honor.

3 THE COURT: Excellent. Anybody need to raise
4 anything before we break for lunch you can raise it later. I'm
5 not precluding you for all time.

6 MR. KATZ: No, your Honor.

7 MS. WRIGHT: No, your Honor.

8 THE COURT: I'll see you at 2:30.

9 THE CLERK: All rise this court will be in recess.

10 (Luncheon recess taken)

11 (afternoon session).

12 THE CLERK: All rise.

13 THE COURT: Have a seat everybody. Ms. Wright you
14 ready to proceed.

15 MR. KATZ: I am your Honor. At this time I call tar
16 even Cabrera ban to the stand.

17 witness , having been previously duly sworn,
18 testified further as follows:

19 THE CLERK: Please be seated. Please state your full
20 name for the record. Spelling your first and last name.

21 THE WITNESS: Tar even Cabrera ban cool I. T A R Y
22 N, C A, B A N hi feign, COO L E Y.

23 MR. KATZ: Thank you.

24 DIRECT EXAMINATION

25

center header

1 BY MR. KATZ:

2 Q. Ms. Cab cab where are you employed?

3 A. Oasis, a paychecks company.

4 Q. What is your current position?

5 A. I'm in implementation and benefits consultant.

6 Q. What do you do in that role?

7 A. I conduct on-site employee orientations, I'm also a
8 licensed benefit consultant, so I assist for on boarding for
9 payroll as well as benefit administration for the benefits we
10 offer as a company.

11 Q. And back in September of 2016, what was your role at
12 Oasis?

13 A. An implementation and benefits consultant.

14 Q. And your duties were the same as you just described.
15 Correct.

16 Q. Do you recall doing on boarding for a company called
17 Paramount Country Club?

18 A. Yes.

19 Q. Do you recall when specifically that on boarding occurred?

20 A. September 23, 2016, as well as September 26, 2016.

21 Q. Were those the only two days you were on-site at Paramount
22 Country Club which I will call PC C doing on boarding?

23 A. Yes, ma'am.

24 Q. And was there anyone with you at the time?

25 A. I had a colleague, her name was Helen as is he SRAEU dough

center header

1 and she was a bilingual implementation and TOEFPLT AOEUFRLTS
2 consultant.

3 Q. Helen?

4 A. Helen as is he SRAEU dough.

5 Q. WAT KWROS you are role during that on boarding to?

6 A. I was the lead implementation and benefits consult taken
7 and she was thereto just to support me as a bilingual and
8 benefits consult TAPLT.

9 THE COURT: What language.

10 A. Spanish.

11 THE COURT: And English.

12 THE WITNESS: And English, yes, sir.

13 BY MR. KATZ:

14 Q. Prior to the September 23, were you -- I'm sorry?

15 A. She offered me water. I'm sorry.

16 Q. All right I'll wait until you?

17 A. No go ahead.

18 Q. Tell me what time did you start the on boarding at PC C on
19 the 23?

20 A. I'm going to approximate -- like 9:00 a.m.

21 Q. Okay?

22 A. It was there the etch tire day it probably did not end
23 until six, 630 -FPT.

24 Q. Walk us through the on boarding you did at PC KR-FRPBLTS
25 okay, so when I arrive. We normally arrive about a half hour

center header

1 early to go ahead and set up the computers for the employees to
2 go ahead and sit at their own computer to do the on boarding.
3 I normally go ahead and set it up and then I went to another
4 location, I believe it was the dining room, I don't know the
5 formal name of the room that I conducted the actual employee
6 meeting for employees that were eligible for medical benefits.
7 So during that time all full time eligible management were in
8 attendance during that meeting where I explained to them what
9 their benefit offerings were. After the meetings, after that
10 meeting concluded, we went down to the room that myself and my
11 colleague where we set up the computers for the employees to
12 come in on a rotating basis for them to sit at the computer to
13 do their on boarding and the on boarding process is about a 15
14 minute process to where they have to go ahead and enter
15 information that is specific to PC C as well as their
16 demographic information. Social Security?

17 THE COURT: Ms. Cab cab, can you slow down. Because
18 I have to understand. You know what you're talking about. She
19 flows what you're talking about. They know what you're talking
20 about. I don't know what you're talking about at all.

21 THE WITNESS: Yes.

22 THE COURT: Okay? Slow down.

23 THE WITNESS: Okay.

24 THE COURT: All right. Let's see I interrupted you,
25 you were saying, you first had this meeting first you went to

center header

1 the room where the computers were sent up. And then you went
2 to a different room and went to a meeting with employees about
3 feign PWEULGTS.

4 THE WITNESS: Yes.

5 THE COURT: And you went back to the room where the
6 computers were and arranged for the employees to come in one at
7 a time to sit at a computer and do their on boarding. That's
8 one of those words on boarding I don't think I ever learned
9 that word before. Anyway, on boarding which is about a 15
10 minute process in which they go ahead and enter information
11 that is specific to PC C, meaning the country club, as well as
12 their demographic information and that's where I cut you off.

13 THE WITNESS: Okay.

14 THE COURT: Sorry about THAFPLT.

15 THE WITNESS: No that's okay.

16 THE COURT: Slow down.

17 THE WITNESS: I sure will.

18 BY MR. KATZ:

19 Q. Let's take a step back, so the first meeting that you held
20 with the employees was to do what?

21 A. The first meeting was in the dining room, I believe that's
22 what it was, for me to go ahead and discuss with them their
23 benefits.

24 Q. Okay?

25 A. Okay.

center header

1 Q. Was Ms. SRAEUD SRAEUD with you at the time?

2 A. I don't not recall, I believe so.

3 Q. Did you meet with all employees at that time or only the
4 employees who qualified for benefits?

5 A. Only the employees that qualified for benefits.

6 Q. Did the employees fill out any forms at that time?

7 A. During the day, not that time specifically.

8 Q. So what was the purpose of just that meeting?

9 A. To discuss the on boarding as far as what the employees
10 were going to go ahead and do when we returned to the room
11 where the computers were set up.

12 Q. Okay, how many computers did you have set up in the on
13 boarding room?

14 A. It was about eight.

15 Q. We use the term on boarding, what did the on boarding
16 process entail?

17 A. Okay, so the on boarding process is a 15 minute process to
18 where each employee would go ahead and enter a client ID number
19 specific to that client.

20 THE COURT: Hold on stop, the client is the employer.

21 THE WITNESS: Correct.

22 A. So the client was Paramount Country Club and we have a
23 client ID that is specify being to Paramount as well as an
24 employer pin, the employ would enter their Social Security
25 number twice as well as their name, full name. Then it would

center header

1 proceed to go into additional information, their demographic
2 address, birth date, telephone number, federal, state
3 withholding, direct deposit information, their emergency
4 contact, if they wished to enter their driver's license. Their
5 citizenship status, so if they were a citizen or if they were a
6 legal resident of the United States, this is where we would
7 capture that information. During that process was also the
8 employee APBLG -PLT form which has the information regarding
9 the arbitration.

10 Q. Okay?

11 A. There's also, again, the voluntary EEO form, which is you
12 know stating your gender as well as your ethnicity and if
13 you're a veteran or former or current member of the US armed
14 forces the other section of our on boarding process was whether
15 or not you would like to receive information from us via mail
16 or electronically.

17 Q. During this process, how would you -- how did you on
18 board -- well, let me take a step back.

19 Were there employees at Paramount that you on boarded that
20 did not speak English?

21 A. Yes.

22 Q. What allowances were made to unboard those employees, if
23 any?

24 A. Each employee has to sit at a computer so we work the
25 room, both myself as well as Helen SRA*EUD, I'd work with

center header

1 anybody that was English speaking I would tend to them, if they
2 had any questions regarding the process and legal even was
3 there to assist with anyone that did not understand me in
4 English, but the on boarding process has the offering if you
5 are not comfortable with doing it in English they can have it
6 translated to them in Spanish. The electronic on boarding
7 process.

8 Q. When you say they could have it translated, where on the
9 screen was that option?

10 A. It's on the very first page. The very first screen.

11 Q. So they can do the on boarding actually in Spanish?

12 A. Correct.

13 THE COURT: Stop you right there. So there's
14 actually a button you would push if you want it in Spanish you
15 click that button and the rest of it is all in Spanish.

16 THE WITNESS: Correct.

17 THE COURT: It's a completely identical process but
18 written in Spanish.

19 THE WITNESS: Correct.

20 BY MR. KATZ:

21 Q. Do you recall if the on boarding that you did on the 26th
22 was similar to the one that you did on the TWEPTB third in
23 terms of the procedure?

24 A. Yes.

25 Q. And do you recall when, which date you had the benefits,

center header

1 the actual benefits meeting that you mentioned earlier?

2 A. Friday the TWEPTB third.

3 Q. Did you have anything else to do with benefits on the
4 26th?

5 A. No.

6 Q. Did you at any point after the actual on boarding then
7 meet with those employees that qualified for benefits?

8 A. If they wished torques I would do a follow up, an
9 individual follow up. (.

10 Q. During the on boarding, do you recall any employees
11 telling you specifically that they needed assistance with
12 completing the process?

13 A. On boarding or benefits?

14 Q. On boarding.

15 A. On boarding? I'm sorry that I'm going to ask a question.
16 Do you mean like just a question regarding the process itself?
17 There were employees that had questions.

18 Q. How would you deal with KWEUR RAOES when employees had
19 them during the on boarding process?

20 A. I would answer them to my best -- you cannot advise or --
21 say for instance during them entering their federal or state
22 income tax, you can not advise because I'm not a certified
23 public accountant, but if they needed an explanation I would
24 explain to them as to what this form during the on boarding
25 process was for.

center header

1 Q. At any point during the process did you physical assist as
2 in input any information for any of the employees that you're
3 on boarding?

4 A. No, ma'am.

5 Q. Did Ms. SRA*EUD who was your colleague physically input
6 any information for any of the employees?

7 A. No, ma'am.

8 MR. KATZ: Objection to foundation or hearsay. How
9 would she know.

10 THE COURT: Well, you could probably lay a better
11 foundation for that, Ms. Wright.

12 MR. KATZ: Sure.

13 BY MR. KATZ:

14 Q. Was there any time period during the on boarding process
15 when you were not present in the room?

16 A. If I had to use the restroom.

17 Q. Okay?

18 A. That was the only other time.

19 Q. Do you recall specifically whether or not you left to use
20 the restroom on the TWEPT third for instance?

21 A. Yes.

22 Q. How long did that last, that trip?

23 A. Five minutes.

24 Q. During the time periods when you were not in the room, who
25 else was in the room conducting the on boarding?

center header

1 A. Helen, but \formerly\formally it was when other employees
2 were not in the room on boarding, we were present both.

3 Q. I'm not sure I understand?

4 A. I'm sorry it was both myself and legal even in the room.

5 Q. On the occasions you used the restroom I'm trying to find
6 out were employees in the room when you took breaks to use the
7 restroom?

8 A. No.

9 Q. During the entirety of the actual on boarding process you
10 were present physically present for every portion of it when
11 employees were in the room?

12 A. Correct.

13 Q. During that process, did you observe Ms. SRA*EUD inputting
14 any information on behalf of any employee?

15 A. No, ma'am.

16 Q. Do you know who Susan Wright is?

17 A. Yes.

18 Q. And was she present for any portion of the on boarding?

19 A. Why he is.

20 Q. For all of it or most of it or how would you describe it?

21 A. Most of it. Most of it. It was a giant room. We shared
22 the room so where I was set up and her work space is in the
23 same vicinity.

24 Q. Okay. During the on boarding process, did you observe
25 Ms. Wright physically inputting information for any of the PC C

center header

1 employees that you're on boarding?

2 A. No, ma'am.

3 Q. You mentioned that there was forms that the employees
4 would have to sign during the process and I think you referred
5 to one of them as the employee agreement, acknowledgment form.
6 Did the employees also have the option of reviewing that form
7 in English or Spanish?

8 A. Correct.

9 Q. And could employees PC C employees complete the on
10 boarding process without electronically executing that the
11 form?

12 A. No.

13 Q. Why not?

14 A. Our process is to where each screen you have to complete
15 that form before you move on to the next form. If you do not
16 complete the required field which everything every part of the
17 on boarding process is required it will not allow you to move
18 forward, and if you were to not complete something and say move
19 on to another screen it will suspend the transaction.

20 Q. Did that occur at any time that you were at PC C during
21 the on board -RG on the 23 and on the 26th?

22 A. No.

23 Q. Did any employees indicate to you that they did not want
24 to execute the employee acknowledgment form during the time
25 period that you were there?

center header

1 A. No.

2 Q. What if anything happens to that form once it's executed?

3 A. It is an electronic form so if anybody wanted to revisit
4 it it would be available for TKPARB dash it's on their employee
5 record.

6 Q. Prior to coming here today, did you review any documents
7 that were submitted on behalf of Mr. Mr. Martinez during the on
8 boarding?

9 A. I reviews the his benefit enrollment form, also I just
10 went through his personnel -- to see the forms he did complete
11 during the on boarding.

12 Q. Did you see whether or not there was an executed
13 employment acknowledgment form on behalf of Mr. Martinez?

14 A. Yes, ma'am.

15 Q. And was that form electronically executed?

16 A. Yes, ma'am.

17 Q. I'm going to ask you to take a look at what has been
18 marked as Exhibit A, I think it's up there?

19 A. Yes.

20 Q. And do you recognize that document?

21 A. I do.

22 Q. And is that the form it says employee acknowledgment that
23 you saw on behalf of Marco Martinez?

24 A. Yes, ma'am.

25 Q. What is it dated?

center header

1 A. This is dated September 26, 2016.

2 Q. Do you have any recollection of meeting Mr. Martinez, you
3 mentioned that he filled out a benefits enrollment form that
4 you saw one for him. You have to say it you're nodding?

5 A. I have no recollection of meeting Mr. Martinez.

6 Q. The benefits enrollment form that you indicated that you
7 saw that he had completed, was that also a part of the on
8 boarding or something separate?

9 A. Something separate.

10 Q. Were you involved in that as well?

11 A. Yes.

12 Q. At what stage in relation to the on boarding did that
13 process take place?

14 A. The benefit enrollment form comes after the on boarding is
15 completed so the forms come to me and I complete them, I review
16 them and then I submit them for processing.

17 Q. When you say you complete them, you're the one who fills
18 them out?

19 A. No, I'm sorry I review them to make sure they're
20 completed, excuse me, I'm sorry.

21 Q. Just want to PHEUBG sure I understand if process
22 correctly. So you have the on boarding let's say on the 26th.
23 After the on boarding is finish THR-D's a separate meeting held
24 where employees fill out benefit enrollment TPORLS?

25 A. No, they all go ahead and do the on boarding which is the

center header

1 payroll portion.

2 Q. Yes?

3 A. Then the enrollment form for their benefits would be
4 handed to myself and I would review it for completion, I would
5 take that with me and I would submit it to my processing
6 department so that way they can go ahead and update our
7 carriers.

8 Q (By The Court) I guess the question is
9 when were those -- not on the on boarding but the
10 employee benefits form, benefit enrollment form,
11 when is that filled out by the employee? When does
12 that happen?

13 A. Why does that happen.

14 THE COURT: When.

15 THE WITNESS: That actually happened on September 26.

16 THE COURT: But before or after on boarding?

17 THE WITNESS: After on boarding.

18 THE COURT: When did they get the forms? When did
19 someone say here's the form.

20 A. On the 23.

21 THE COURT: That was that first meeting you talked
22 about.

23 THE WITNESS: Correct.

24 THE COURT: At the first meeting with all the people
25 eligible for benefits they all come in, they're there for the

center header

1 meeting, they get the forms and you tell them, well you're
2 eligible for health or eligible for dental whatever the case
3 may be?

4 THE WITNESS: Correct.

5 THE COURT: Right?

6 THE WITNESS: Yes.

7 THE COURT: They give you the form after the on
8 boarding.

9 THE WITNESS: Correct.

10 THE COURT: Whenever it is they do the on boarding.

11 THE WITNESS: Correct.

12 THE COURT: Approximate the person did the on
13 boarding on the 23 you would get the form on the 23.

14 THE WITNESS: Correct.

15 THE COURT: But if the person did the on boarding on
16 the 26th. Meaning at the computer.

17 THE WITNESS: Correct.

18 THE COURT: You'd get the form on the 26th.

19 THE WITNESS: Yes.

20 THE COURT: Okay.

21 MR. KATZ: Thank you.

22 BY MR. KATZ:

23 Q. What type of information was on the benefit enrollment
24 form?

25 A. On the benefit enrollment form it's demographic

center header

1 information, name, Social Security number, date of birth,
2 county in which you live, the effective date of the benefits,
3 the benefits that they're electing for medical, dental, vision
4 and any kind of dependent information as well as beneficiary
5 information and signature and date.

6 Q. And that form was in English or Spanish?

7 A. The form from Mr. Martinez?

8 Q. Yes?

9 A. Was English.

10 Q. Do you recall approximately how many employees completed
11 benefit enrollment forms on the 26th, approximately?

12 A. Approximately 20.

13 Q. So it wasn't all the employees that would have qualified?

14 A. Correct.

15 Q. Do you have any recollection of Mr. Martinez himself
16 specifically during the on rolling process?

17 A. No, ma'am.

18 Q. Do you recall any employee during the on rolling -- sorry,
19 I'm going to take that back.

20 Do you recall any PC C employee on the 26th when you were
21 doing on the rolling -- on boarding complaining of other
22 employees filling out or inputting on boarding information --

23 A. No, ma'am.

24 Q. Did you see any incidents or occasions where that
25 occurred?

center header

1 A. No, ma'am.

2 THE COURT: Hold on a second. Where what occurred?

3 MR. KATZ: Where someone inputted information for
4 another employee during the on boarding question -FLT.

5 THE COURT: Your question was I imprecise, the first
6 question was do you recall any employee complaining.

7 Q. Yes?

8 THE COURT: And you said did you see any indents
9 where that happened.ful meaning complaining. That's not what I
10 meant.

11 MR. KATZ: No.

12 THE COURT: The question was, did you ever see a
13 situation when you were there on the 26th of September where
14 someone inputted information in the in boarding process for is
15 a employee?

16 THE WITNESS: No.

17 MR. KATZ: That was my question, much better question
18 and I'll adopt it. Did you.

19 A. No.

20 Q. Observe that?

21 The on boarding question once it's completed what then
22 happens to the portal? Do they log off? What do the employees
23 do once they're done?

24 A. So once it's completed they come to a screen saying that
25 the employee portion of the on boarding had been completed,

center header

1 they get an email, not an email, it's a system generated
2 screen, they can either print or email themselves a copy of of
3 the completion notification.

4 Q. Okay?

5 A. And then Susan or Mr. Black would go ahead and receive
6 notification as well that that employee had received the on
7 boarding and they would complete the manager portion of the on
8 boarding and that is just the bit of information that they
9 would enter as far as the employ why ye's pay rate, if -- their
10 job title and their start date.

11 Q. The computers that the employees were using for the on
12 boarding, who owned those computers, were those PC C computers
13 or Oasis computers?

14 A. Oasis.

15 Q. And once the on boarding process the completed by an
16 employee, can that employee go back in and change whatever
17 information they had submitted?

18 A. No.

19 Q. Why not?

20 A. Because that information has now transmitted over to our
21 payroll system and in order for any kind of changes to take
22 effect I, myself, or someone on my team would have to delete
23 the record completely.

24 Q. Similarly, once the employee completes the on boarding
25 process, would any PC C employee, including Susan, be able to

center header

1 go in and change or add to what was submitted?

2 A. No.

3 Q. Why not?

4 A. The information is saved, therefore there is no changes
5 that can be made on the system.

6 Q. What would stop such a change?

7 A. What would stop KPWARB -- the system does not allow allow
8 for anyone. Once the employee had completed their portion of
9 the on boarding it's completely done. You cannot go back.

10 Q. Can Oasis go back and make changes to an individual
11 employee's on boarding information?

12 A. No, ma'am.

13 Q. What's the reason for that?

14 A. We are compliant, and the system will just not allow.

15 MR. KATZ: I have no further questions at this time,
16 your Honor.

17 THE COURT: Mr. Katz, one second. I just want to get
18 some clarification on one thing.

19 THE WITNESS: Sure.

20 THE COURT: You said that there was a button or
21 something in the on boarding screens that you're looking at
22 that would allow you to switch from English to Spanish.

23 A. Yes.

24 THE COURT: Where is that and how is that done,
25 exactly.

center header

1 A. It's on the very first screen of our on boarding, so our
2 very -- we have a home page for the on boarding and on that
3 very first page where you're entering your Social Security
4 number and that client specific ID number with your name, first
5 name, last name, Social Security number twice, right below it
6 it asks if you want to go ahead and continue this in -- if you
7 want it to be done in Spanish.

8 THE COURT: Is that question asked in English or in
9 Spanish?

10 THE WITNESS: It's in evenings -- it's actually in
11 English and in Spanish. So it will say in he is span KWROEL.
12 It does say English actually it's in Spanish I apologize. I'm
13 sorry I'm trying to -- but it is in Spanish.

14 THE COURT: Do you have that screen?

15 MR. KATZ: Yes, your Honor, for what it's worthy do
16 have -- I didn't exchange it as an exhibit but I can give
17 copies I have the whole print out of exactly.

18 THE COURT: I'd like the see it. Since I'm the fact
19 finder I'd like to see it.

20 MR. KATZ: May I approach.

21 MR. KATZ: Your Honor for the record I would just
22 object that none of this was produced to us prior to right now.

23 THE COURT: You've never seen this before?

24 MR. KATZ: No.

25 THE COURT: Well you're going to get it right now.

center header

1 You do have exhibits G and H. It's not in there Ms. Wright.

2 MR. KATZ: It was given -- we intend to use this as
3 an exhibit but I had it for reference just in case it was
4 needed.

5 THE COURT: Back to G and H. What you just gave me
6 is not included in G and H.

7 MR. KATZ: That's H, your Honor. That is H.

8 THE COURT: It is H.

9 MR. KATZ: I I never received the exhibits G or H.
10 Today or prior to today.

11 THE COURT: I received it. I didn't have it before,
12 then I do have it and you handed it up to my -- wait a minute.
13 G and H you've never seen? How do you even know THAFPLT do you
14 have them now?

15 MR. KATZ: Well, I still have they still have not
16 given G and H to me.

17 THE COURT: You haven't given them G and H.

18 MR. KATZ: No, your Honor I did not distribute G and
19 H because I was not planning to use them. Even though it was
20 in the exhibit package I just handed it to him right TPHROU.

21 THE COURT: You handed H to him.

22 MR. KATZ: Yes, your Honor.

23 MR. KATZ: I still have not seen G.

24 THE COURT: We don't really care about G. She's not
25 using G. She's talking about H. Let's focus on. Had. She

center header

1 just handed you H for identification. The first page of which
2 just so we're all talking about the same thing, it says E O B
3 local employee on boarding, what is E O B.

4 THE WITNESS: Electronic on boarding.

5 MR. KATZ: I have an extra copy your Honor if you
6 need it.

7 THE COURT: Well we might, given to the witness, you
8 might as well. First let me look at it.

9 MR. KATZ: I would like for the record to be clear we
10 object to the exhibit since it was TPHEFRD provided prior to
11 the hearing as required by the Court.

12 THE COURT: I'm KUR gross why you don't. Not sure
13 you're going to use it it PHAOEPS you might use. If you might
14 uses you should provide it. If you don't use it.

15 MR. KATZ: I didn't even flow it existed until we
16 started speaking with tar inand heard there's a print out that
17 we could have gotten with the actual steps so we got it, I
18 think maybe a week ago.

19 THE COURT: Okay a week ago, so you could have given
20 it to Mr. Katz a week ago, you could have.

21 MR. KATZ: I wasn't sure I WALGS going to need to.

22 THE COURT: I know that, but when you say you're not
23 sure, the implication means the implication is you might and if
24 you might that's enough of a reason to turn it over so that we
25 don't have this objection.

center header

1 MR. KATZ: Absolutely, your Honor.

2 THE COURT: Well we're going to make a record in any
3 event. This is exhibit H. You have in in front of you now
4 Ms. Cabrera ban.

5 A. Yes, sir.

6 THE COURT: It says E O B local employee on boarding.

7 THE WITNESS: Correct.

8 THE COURT: We're TKPWO*EG to call it exhibit H for
9 identification, hasn't been received in evidence yet. I just
10 WRAPBT you to tell me what this is. What is H? I just read
11 the at this time too will I want you to explain.

12 THE WITNESS: I didn't know if you meant it to me or
13 Ms. Wright.

14 THE COURT: To you.

15 THE WITNESS: I apologize. This is the very first
16 screen of our electronic on boarding, so this is the screen
17 where the employee would need to go ahead and enter the
18 employer ID number, this is specific for each of our clients so
19 paramount would have had their own specific client ID number.

20 THE COURT: How does the employee know the client ID
21 number?

22 THE WITNESS: That is relayed to them. So, prior to
23 me coming on-site I go ahead and forward information to my
24 point of contact at the client so in in case it would have been
25 Mr. Black as well as Susan and then the information was

center header

1 forwarded to the employees as well as when I do come on-site I
2 have another printout with the employer ID with the pin number.

3 THE COURT: What's a pin number.

4 THE WITNESS: A pin number is a system generated pin
5 number that is specific for each and every one of our clients
6 in order for them to access their on boarding.

7 THE COURT: My only question; you said that the
8 employee inputs the client ID number and the pin number.

9 THE WITNESS: Correct.

10 THE COURT: In addition to Social Security number and
11 other stuff.

12 THE WITNESS: Correct.

13 THE COURT: Presumably they know their own Social
14 Security number.

15 THE WITNESS: Correct.

16 THE COURT: I'm trying to figure out how they know
17 the client number. They're not the client they're the employee
18 of the client EUFRPBLTS I give it to them it's on paper while
19 I'm on cite with them. It's also distributed via email.

20 THE COURT: Somebody might not read their email.
21 They walk into the room they say okay. There's a computer.
22 Have at it. The first thing TE they need is the client number.
23 A. Correct.

24 THE COURT: They didn't do it EUFRPBLTS do you give
25 give that to them?

center header

1 THE WITNESS: Yes, it is a print out.

2 THE COURT: And be the pin number.

3 THE WITNESS: And the pin number.

4 THE COURT: Okay I any I interrupted you, I can't
5 remember when I did. You were talking about the first page.

6 THE WITNESS: So, with the information, because I go
7 ahead and present to them on a form with several copies on cite
8 the employee has the printout with the information, the
9 employer ID as well as the inputting number, each employees has
10 to go ahead and enter their first name, their last name as well
11 as their Social Security number twice and then it's going to go
12 ahead and ask for that security measure to make sure -LGTS
13 normally the cap KHA.

14 THE COURT: The what.

15 THE WITNESS: The security cap KHA.

16 THE WITNESS: C A P T C H A. It's basically I'm not
17 a robot. And if they'd like to proceed in English, they would
18 click on next and if they'd like to proceed in Spanish they
19 would click on that pink screen to the left, the pink button
20 where it says in he is span KWROEL.

21 THE COURT: There's a blue button for next and a pink
22 button for in he haves pan KWROEL.

23 THE WITNESS: Correct.

24 THE COURT: If you check on the he is span KWROEL
25 button everything else is in Spanish.

center header

1 THE WITNESS: Correct.

2 THE COURT: And during the orientation meetings this
3 is advised to the employees.

4 THE COURT: In the what meeting?

5 THE WITNESS: The orientation -- when I'm there to do
6 the on boarding.

7 THE COURT: I'm sorry when is this meeting?

8 THE WITNESS: On the 23 of September.

9 THE WITNESS: But that's only with some employees.

10 THE WITNESS: No that would have been with all of
11 them anybody that came into that room if they were Spanish
12 speaking, it was advised that they can go ahead and continue in
13 in Spanish.

14 THE COURT: Okay, but I think you testified earlier
15 that that meeting that first meeting on the first day was only
16 with a handful of employees 20 employees or something not
17 everybody.

18 THE WITNESS: That was the benefit meeting, but the
19 actual on boarding meeting, the benefit meeting is only for
20 eligible employees.

21 THE COURT: I only thought there was one meeting now
22 you're telling me there's two meetings.

23 THE WITNESS: Basically.

24 THE COURT: Not basically.

25 THE WITNESS: Sorry there's a first meeting with the

center header

1 employees.

2 THE COURT: Which employees.

3 THE WITNESS: The full time eligible medical eligible
4 employees. And that was approximately 20 employees and then
5 there are meetings while we were in the room doing the on
6 boarding and explaining to them what they're doing during this
7 process. And there's also an introduction to each employee
8 when they come into the room to do the on boarding what we are
9 actually doing. I explained to them what the on boarding
10 process is.

11 THE COURT: So you're saying before -- let's say on
12 the 23 there was this meeting with the full time employees that
13 were eligible for benefits. Let's just say the actual on
14 boarding for any particular employee, whether it was one of
15 those people from the 23 or somebody else. Let's say that's on
16 the 26th and on the 26th. Before that person started the on
17 boarding process you would give them an explanation for what
18 they're doing?

19 THE WITNESS: Yes.

20 THE COURT: You wouldn't just point to the computer
21 close your eyes EUFRPBLTS no.

22 THE COURT: What would you do I'll trying to figure
23 that out it's important to me.

24 THE WITNESS: I understand.

25 THE COURT: I walk in the door I'm an employee I'm

center header

1 wait I go in the hallway patiently. I'm a little impatient
2 because I have to go back to work. You say come in you're next
3 I walk in the door what happens next.

4 THE WITNESS: You're coming in, I'm explaining to you
5 that you're going to go ahead and enter what I said here,
6 you're going to take the flier that I printed with the client
7 ID number as well as the pin, you're going to enter TPHA
8 information as well as your Social Security number, your name,
9 you're going to go ahead and let me know, do you need to have
10 this done in Spanish or are you okay with doing it in English
11 and dependent upon what ever it is that you're doing here,
12 we're going to go and go through the entire process and what
13 you're going to do is enter your address, your date of birth,
14 if you have an email address you're going to provide that to
15 me, you're going to go ahead and let me know how you file your
16 takes, are you single, are you married. The number of anow
17 answer he is that you're withholding on a federal as well as
18 state level. You're going to let me know your citizenship
19 status. You're going to enter if you're a non US citizen
20 you're going to go ahead and enter whether it's an alien ID
21 number or another EUFRPLT D number. You're also going to ahead
22 and enter your direct deposit information as well as your
23 emergency contact. You're going to complete the employee
24 acknowledgment form, you're going to complete the EEO section
25 and whether or not you would like to receive information from

Angela O'Donnell, RPR, 914-390-4025

center header

1 Oasis electronically and once you've completed that, you're
2 going to click on the finish bar and it's going to bring you to
3 the on boarding completion screen.

4 THE COURT: Okay are you sitting or is either you or
5 Helen sitting with each employee while they do this? They go
6 through this 15 minute process.

7 THE WITNESS: If there are questions were there --
8 I'm formerly standing because I'm working to see if anybody has
9 any questions so that way either myself or Helen can make it
10 over to that employee quickly. But it's normally not sitting.
11 It's normally like a classroom setting, so if they have
12 questions we're there to assist.

13 THE COURT: But you do need to talk to each one
14 individually. Or do you talk to each individual employee.
15 Every individual employee to get them started EUFRPBLTS to get
16 them started.

17 THE COURT: They have to have the ID number and pin
18 number.

19 THE WITNESS: Correct.

20 THE COURT: Which you give to them.

21 THE WITNESS: Correct.

22 THE COURT: And you're telling me again with every
23 single employee you tell them off the bat you can do this in
24 Spanish or English.

25 THE WITNESS: Correct.

center header

1 THE COURT: Do you remember on those two days whether
2 some of the employees did the on boarding in Spanish?

3 THE WITNESS: No, I cannot.

4 THE COURT: Do you remember there were Spanish
5 speaking employees?

6 THE WITNESS: Yes.

7 THE COURT: Do you remember Ms. -- EUFRPBLT Helen.

8 THE COURT: Helen SRA*EUD, assisting employees in
9 SPAEURPB with what ever it is they were doing or whatever
10 questions they had?

11 THE WITNESS: Yes, why yes, sir.

12 THE COURT: But again you have no particular
13 recollection of Mr. Martinez?

14 THE WITNESS: No.

15 THE COURT: One way or the other.

16 THE WITNESS: No.

17 THE COURT: All right well I guess this is all, we
18 still haven't really gotten to the question of whether to admit
19 this document into evidence. You just received it today? I'm
20 reluctant to receive it into evidence. There's been testimony
21 about the on boarding process and the fact it can be done in
22 English or Spanish, whether the document is introduced in
23 evidence. The document obviously would confirm that, because I
24 could see it right on the document, but if you really are
25 objecting to it, I'm not sure -- well I guess I'd want to hear.

center header

1 Are you objecting to it. You you object you don't really like
2 to have it because it's going to hurt your case or objecting to
3 it because you didn't see it until today.

4 MR. KATZ: It's fundamental fairness of we had an
5 order of all documents by June.

6 THE COURT: I didn't hear you because you're
7 mumbling.

8 MR. KATZ: Sorry we had an order all documents would
9 be exchanged by the middle of July, we've had two months since
10 then, I've never heard of this document till two minutes ago
11 when it was handed to plea. We'd had to chance to review I
12 compare it with your clients of I the ask I he is why. The if
13 we thought there was other discovery we needed prior to the
14 hearing. When we met with your Honor, in June WAUPB of the
15 understanding of the parties was we didn't need discovery
16 because we knew the universe of what was going on. This to a
17 large extent changes it.

18 THE COURT: I don't think it changes it, it confirms,
19 it's corroborative evidence. The absence of it, it can't be
20 that they're holding something back in order to surprise you
21 because this helps the defense, it hurts the defense. Why
22 would they hold something back that's hurtful unless they
23 didn't know they had it. What Ms. Wright told me we didn't
24 know we had it until a week ago. Which means you knew a week
25 ago. Doesn't mean you didn't know, it just means you didn't

center header

1 know until a week ago. I accept your statement. You tell me it
2 was a week ago, I accept that.

3 MR. KATZ: It was, your Honor. I also point out the
4 information that's on this form was in all the Oasis
5 declarations which we submitted. It basically walked through
6 the process just like this document. What I didn't know was
7 that they could print off I'll call it a dummy document that
8 actually shows the process in real time rather than them
9 describing it as they did in their declaration. So it's not a
10 surprise.

11 THE COURT: This document doesn't apply, this is a
12 generic sort of I should say hype TH*ET call, HAEUPB I is the
13 employee, that's not an employee at PCP C. Or PC C.

14 MR. KATZ: No, your Honor it's a demo.

15 THE COURT: It's a demographic mow. So you're saying
16 you didn't know PWR the demographic PHROE, but you did provide
17 through the affidavits submitted in connection with the motion
18 the SES.

19 MR. KATZ: Absolutely your Honor and it walked
20 through every single. What the employee would do in every
21 screen including tar in's and crystal who we didn't bring in
22 because it overlapped.

23 THE COURT: Who's crystal.

24 MR. KATZ: That was the employee who had the HELTD
25 issue.

center header

1 THE COURT: Who is she though.

2 MR. KATZ: We works at Oasis, we wasn't there in
3 person but she oversaw the PRO STKPWRES.

4 THE COURT: I'm going to sustain the objection. I do
5 recall, I don't have the order in front of plea, I certainly
6 have a recollection of issuing an order saying whatever
7 documents you intend to use at this hearing or trial needed to
8 be produced by a particular date oh yeah I just TPOUPD it how
9 about that. It's dated June twentieth and it says by July
10 twelfth, which obviously this is well past that. By July
11 twelfth. Each side shall produce to the other side copies of
12 all documents that will be offered in evidence except those for
13 impeachment, et cetera. So, the objection is sustained, I
14 mean -- you didn't produce it. I'm not criticizing you for not
15 producing it, because you didn't have it. Therefore that's why
16 you didn't produce it. The fact is you didn't produce it and
17 it seems to me it's TPAUPB fair, it is unfair to the plaintiff
18 to say, well, we didn't know we had it now we know we have it
19 so we're producing it now. That's still late. So I understand
20 why you're now saying you weren't sure whether you were going
21 to use it. I think another way to say it is how could you
22 possibly use it you hadn't produce it in accordance with my
23 order. The objection is sustained. I don't know that it
24 matters that much. Because the testimony is the testimony.
25 The document is not in evidence. But that doesn't stop her

center header

1 from TEFLG *E testifying about the process or the other
2 witnesses from testifying about the process. Any event.
3 Exhibit H is not received and I will not consider it as such.

4 Okay. I think Ms. Wright had completed her
5 questioning although if there's anything you wanted in light of
6 my additional questions any additional yes you wanted to ask on
7 direct you're welcome to do so.

8 MR. KATZ: I don't have any additional questions your
9 Honor.

10 THE COURT: Mr. Katz.

11 MR. KATZ: May I just have one second.

12 THE COURT: I meant to ask about this before,
13 Ms. Wright. See if you can help me with this. On Exhibit A at
14 the very to much there's the client ID number filled in, do you
15 see that? Do you have Exhibit A?

16 MR. KATZ: Yes, your Honor.

17 THE COURT: The employee acknowledgment TPORP.

18 MR. KATZ: Yes, your Honor.

19 THE COURT: This is the one with the E signature of
20 Mr. Martinez.

21 MR. KATZ: Yes, your Honor.

22 THE COURT: It has a client ID and next line says
23 employee ID and it's blank.

24 MR. KATZ: Yes.

25 THE COURT: What is that. What is employee ID was

center header

1 that a part of this process or not a part of this PRO he is is.
2 What's the story with that.

3 MR. KATZ: I can ask tar inmy understanding is Is not
4 a part of the PRO he is is.

5 THE COURT: TPHRERDZ, that employees did not input an
6 employee ID in the Paramount Country Club on boarding process.

7 MR. KATZ: I would prefer to STPRER TPAOEU with tar
8 inif you don't mind.

9 THE COURT: Why don't you ask.

10 BY MR. KATZ:

11 Q. Ms. Cab cab, was part of the bro SES was there an employee
12 ID the employee had to input?

13 A. No.

14 THE COURT: Any reason why you see Exhibit A. What's
15 that doing there.

16 THE WITNESS: That's actually just a generic form.
17 \formerly\formally an employee ID number is generated after the
18 on boarding is completed.

19 THE COURT: It's blank in this.

20 THE WITNESS: It is blank I could not answer to why
21 the sits system generates the employee ID on the top of that
22 form.

23 THE COURT: That's not something that -- in other
24 words it would be blank for ever row employ he EUFRPBL correct.

25 THE COURT: It's nothing special.

center header

1 THE WITNESS: No there eave nothing SPERB.

2 THE COURT: That was my question.

3 THE COURT: Any further questions.

4 MR. KATZ: No, your Honor.

5 THE COURT: KWROS.

6 MR. KATZ: We have nothing your Honor.

7 THE COURT: No questions. Okay you may step down.

8 (Witness excused)

9 THE COURT: I think the exhibits are A through F plus
10 I.

11 MR. KATZ: Yes, your Honor.

12 THE COURT: Anything further that either side wants
13 plea to consider or see or review? I'm not going to decide
14 right at this moment I want to make sure the record is
15 complete. I have the underlying motion that's all part of the
16 record, I now have the testimony of the four witnesses I now
17 have the exhibits offered in evidence. Is there anything else
18 in *EU in addition to those things.

19 MR. KATZ: Evidentiary wise no. I would ask if the
20 court would allow for a short summation I'd be hope 20 doing
21 that.

22 THE COURT: You'd like to do that now.

23 MR. KATZ: Yes.

24 THE COURT: Why don't you go ahead and do that.

25 MR. KATZ: So, your Honor. The testimony of four

center header

1 witnesses here today.

2 THE COURT: Do me a favor stand at the Paul E.
3 Davison yum. I'm not criticizing you, you know what I'm
4 talking about. You tend to enunciate as well as some people
5 might. It's a big room I've got to hear you, otherwise what
6 good -- it's terrible. Go ahead.

7 MR. KATZ: There's been some testimony from four
8 witnesses today. None of the testimony has indicated that
9 anyone saw Mr. Martinez enter any information into the
10 computer, the testimony of Mr. Martinez was that he understood
11 there was a new payroll company coming in he believes he met
12 with Ms. Wright to set up on the payroll company. He never
13 touched the computer, he didn't log into the computer, he
14 didn't type on the computer, the information that you've heard
15 from Ms. Cabrera ban that's necessary is all information that
16 Paramount has, his name, his Social Security number, his
17 address, they had him on payroll for years, if they needed his
18 direct deposit his I nine is in evidence when he first started
19 working. His W four in evidence from when he first started
20 work, anything that needed to be done to put into the Is is
21 item could have been done but no one from owe cyst ace has
22 testified. Ms. SRA*EUD was not testifying who was allegedly
23 the Spanish speaking bilingual person who was present for the
24 on boarding, Mr. Black, Ms. Wright, no one testifies *E
25 testified they saw Mr. Martinez do this. The information

center header

1 clearly could have been done by anyone.

2 THE COURT: Let me stop you right there. Not
3 according to Ms. Cabrera ban. She said that, first of all she
4 described in explicit detail how the process worked and the
5 employees would come in one by one and with the assistance of
6 herself and Ms. SRA*ED and this sort of general oversight of
7 Ms. Wright. They would complete the process themselves. Every
8 page had to be completed before you went to the next page and
9 if it was completed it could not be uncompleted it could not be
10 gone back into or redone or corrected or changed.

11 MR. KATZ: There's no mechanism that requires that
12 specific person to do that. If Ms. Wright for example put in
13 all Mr. Martinez's information, the system would accept it.

14 THE COURT: So what you're saying your THAOEUR of
15 what happened here is that Ms. Wright for you had an
16 opportunity to cross examine -- you didn't ask her this. Did
17 you ask letter whether she sat down at the computer using the
18 information she had filled out the form for Mr. Martinez
19 fraudulently and committed a crime really that would create a
20 forged document. Maybe she did. But you didn't even ask her
21 that. She certainly didn't testify she did that. What's the
22 evidence she did that.

23 MR. KATZ: I'm not saying Ms. Wright did it. I'm
24 saying dash TKAERB.

25 THE COURT: You just did say that.

center header

1 MR. KATZ: I stayed for example she has the
2 information. Paramount has the information. Just as there's
3 no inform *E evidence. There's no evidence that Mr. Martinez
4 did it other than the HRAOEUP THET I call everyone must have
5 done it because it got down.

6 THE COURT: It's not a hypothetical. The evidence
7 shows that's the way this was done and the process was fold in
8 this case. Although you're correct no person testified
9 Martinez did this. Obviously he didn't testify to that. He
10 said he didn't do it. No one else said he did it. You know,
11 did anyone else notice the irony here that we're having this
12 discussion about whether a person signed a document an
13 important document and the reason we're having the discussion
14 is because it's an electronic signature which means there's no
15 handwritten or HRELGTS just KA*UL it a wet Cigna TPHAOUR. It's
16 not technically wet. Wet in the sense it was incorporated but
17 we have a whole bunch of other documents that have wet
18 signatures on he is we don't have a dispute about those.
19 Mr. PHR*R says yep that's mine. Next one much yep, TPHAES
20 fine. Welling because it's a signature and it's his. Did
21 anyone in the great corporate world ever think about this and
22 say, you know, H-PL, these signatures are great they're so
23 efficient but particularly in this context where employees are
24 coming in one by one, waiting in the hallway, coming in one by
25 one, why not do it -- why wouldn't you do it in writing so as

center header

1 to avoid this exact problem? There's a stark contrast here
2 between documents in evidence with handwritten signatures as to
3 which it's obvious that Mr. Martinez signed them. He says so.
4 And then a document which is also in evidence that has his name
5 on the bottom but it's not obvious that he signed it
6 essentially that's what you're arguing it's not obvious because
7 the signature is not on it. It's is a E SPEUG since it's a E
8 signature which requires someone to go into a computer and
9 utilizing a client ID number and a pin number and Social
10 Security number and date of birth, the kinds of data that you
11 say correctly the employer already knew because he's already
12 working there. They already have all that information, so it
13 could have been done by somebody else. That's really -- your
14 theory of the case is my client says he didn't do it, that
15 doesn't really explain who did do it, so, there's three
16 possibilities. One he did it and you're saying he didn't, two
17 is that somebody else did it but the problem is you don't have
18 any evidence of somebody else doing it. I guess those are the
19 only two possibilities I thought there were three. The point
20 is he SAEUT I didn't do it. We know it was done because we
21 have it here it is right here in front of me Exhibit A. The
22 problem that you have and the great iron near is we have all
23 these documents the vast majority of documents have a signature
24 on them where it's clear as a bell who signed it, no dispute
25 whatsoever and the one document that matters doesn't have a

center header

1 signature on it and that leaves you the opportunity to say,
2 well, my client says he didn't do it and I know everybody else
3 says this is the process, so forth and so on. But no one
4 testified they saw Mr. Martinez do it. Therefore he didn't do
5 it. That's really your argument. He says he didn't do it, no
6 one testified that he did do it, therefore he didn't do it.

7 MR. KATZ: And there's an absence of any evidence of
8 a sign in that he signed into the room to the computer or an
9 absence of any sort of electronic receipt that he got the
10 document after, anything that would indicate that whatever
11 happened at some point soon after he signed it he went to the
12 computer or he got a copy of this right after or anything like
13 that. The only electronic record of anything here is a piece
14 of paper with his typed name on it.

15 THE COURT: That's a pretty good paper. You said
16 there's nothing here. Well, yes there is, there's a document
17 with his E signature on it. That's the evidence. That's
18 pretty good evidence. Is it conclusive. No it's not
19 conclusive. That's why we're having a hearing if it was
20 conclusive we wouldn't even have an egger a. I agree with you
21 so far of to say there's no evidence. Of course there is, it's
22 right here. I'm looking right at it. It's not conclusive.

23 MR. KATZ: To me there's TPOHOFD that he went to take
24 that computer. There's evidence of we didn't object to it
25 going into evidence. It's clearly there, it's a business

center header

1 record, but there's nothing. And in order to say, you know he
2 went -- everyone had to go to a computer. There's not even a
3 record of the other documents that allegedly were signed with
4 the emergency contact or before. TPHROPB of those were shown.
5 Nothing showing it was emailed to him. Nothing where he had to
6 sign to the computer or sign in to the room to go to the
7 computer. You had two of the witnesses said they had were
8 essentially in the room the entire time of the on boarding,
9 Ms. Wright was in most of the time and Ms. Cabrera ban was
10 there she said the whole time and there's no recollection by
11 anyone that Mr. Martinez was even at a computer typing at any
12 point. And you know, for *E in terms --

13 THE COURT: Again you're wrong about that. There is
14 evidence of that, it's Exhibit A. But at the same time I agree
15 with you it's not conclusive evidence and there isn't the other
16 things you just described. I'm push being back a little bit.
17 To say there's no evidence is not correct it's not true at all.

18 MR. KATZ: I guess I'm clarifying, I'm meaning that
19 there's no evidence that Mr. Martinez personally went on to the
20 computer to create the account that created that document.

21 THE COURT: Well, yes THRES because -GTS his E
22 signature. One can infer from that. Not conclusively. I said
23 that now about five times. One could infer from that well he
24 did it because his name is on it. That would be some evidence
25 he did do it that he went on to the computer and did exactly

center header

1 that. Maybe you have a slightly different argument. Maybe you
2 would argue, well, there's some evidence that he did it did it
3 but there's certainly no evidence he read it or understood it
4 or new what the heck he was doing when he signed it. You would
5 be right there isn't any such evidence. Of course that doesn't
6 really matter because people are bound by the contracts they
7 sign otherwise our very way of life would disappear, I think.
8 That's maybe an overstatement, but you get it. People they've
9 got to be responsible, green ups are responsible for what they
10 do.

11 So if I were to infer from this document, that, yup,
12 he signed it, especially in light of the testimony of these
13 other witnesses about the process, lacking the precise concrete
14 proof other than the document itself that he signed it, well,
15 then, you would lose in this situation, whether he read it or
16 understood it, that's really beside the point.

17 MR. KATZ: I mean.

18 THE COURT: A better argument might be and this might
19 explain why he doesn't remember doing it is he didn't read it.
20 He clicked yet yes yes yes he went back to work he's a working
21 guy he's got work to do and he didn't really care what it said.
22 Fine you W-PBT May to sign it where do I sign. Fine. If
23 that's what happened, which may be what happened he's out of
24 luck he's not out of luck, he can arbitrate his claim. He
25 doesn't lose his right to arbitrate his claim. The only person

center header

1 are arguably out of luck is you frank lying because now you
2 can't bring a class action and potentially reap the substantial
3 fees that 3450EUG9 be associated with that. That's not my
4 problem. I don't think Mr. Martinez is adversely impacted at
5 all if I ruled against him. So he can't make his climbs here,
6 he can make them somewhere else, perfectly PHR-BGT for 24EU78.
7 What the forum. Is it AAA or what is it.

8 MR. KATZ: It doesn't say in there.

9 THE COURT: What.

10 MR. KATZ: It doesn't say on the agreement just says
11 arbitration. I'm SKEG.

12 THE COURT: Asking the lawyers if they wouldn't tell
13 me.

14 MR. KATZ: We would probably have to agree to a
15 mutual rule. Typically it's three, it doesn't mandate.

16 THE COURT: What does it mandate.

17 MR. KATZ: It doesn't mandate the number or forum.

18 THE COURT: Want me to come arbitration, compel it
19 where. If I want granted your motion what can exactly am I
20 compelling arbitration in the generic sense.

21 MR. KATZ: No, your Honor the parties would agree to
22 the actual arbitrator.

23 THE COURT: Where does it say that?

24 MS. WRIGHT: No, it's not in the document.

25 THE COURT: So why are you saying the parties would

center header

1 do that?.

2 MS. WRIGHT: Because that's what typically occurs
3 in --

4 THE COURT: Typically when they're typical you use
5 the word typical, typically the arbitration agreement will
6 spell out who the arbitrator or who the arbitration system is
7 or the services or who it is that's actually doing the
8 arbitrating as opposed to saying we agree to arbitrate.

9 MR. KATZ: Your Honor, I can only tell you that in my
10 experience and I've done three in the last four months, none of
11 them have spelled out any of that information.

12 THE COURT: Well, whatever? We don't have toy
13 address that at this time.

14 MR. KATZ: I have nothing further.

15 THE COURT: I know I interrupted you, if there's
16 anything further you wanted to say, you're welcome to say it.
17 I don't want to cut you off.

18 MR. KATZ: No, your Honor.

19 THE COURT: Ms. Wright. Would you like to say
20 anything.

21 MR. KATZ: Sure, your Honor. Just briefly.

22 What we have here is an employee who submitted a deck
23 KHRA RAEKS basically indicating that it was Susan who filled
24 out and submitted information for him and then admitted that he
25 didn't know if it in fact was her because he couldn't see what

center header

1 she was doing on the screen and claimed he didn't understand or
2 speak English even if he could have seen it. We also have the
3 same employee saying, you know, there were forms that were
4 submitted that he wouldn't have understood, again, because of
5 his very limited English and he used this word in his
6 declaration very limited when enduring the questioning he's
7 understanding some of the questions I'm asking in English it's
8 clear he understood them. He testified Susan did speak
9 Spanish, and in the declaration says she doesn't speak Spanish.
10 There's been so many inconsistencies in his submission that I
11 think it's fair to say that if you are making
12 misrepresentations in one area you would make it otherwise.

13 We also have witnesses.

14 THE COURT: What's the misrepresentation exactly.

15 MR. KATZ: I'm sorry.

16 THE COURT: What misrepresentation are you referring
17 to.

18 MR. KATZ: One of the main one in his declaration he
19 indicated that Ms. Wright spoke no Spanish whereas he testified
20 that she did. And that was, you know, something that he then
21 direct *E corrected. He also indicated that she filled out the
22 information for him and that they had no conversation but on
23 the stand we're hearing that they did have an exchange which at
24 one point he said it was half Spanish, half English. I'm not
25 ensure what the exchange was at this point because my notes are

center header

1 all over the place given the changes.

2 What we do have our witnesses -RB not just from PC C
3 but from Oasis we havtar Lyn who outlined the way the process
4 worked. There is no doubt that the on boarding documents for
5 Mr. Martinez are dated on the 26th, which is the day he claimed
6 he met with Susan and he also indicated that the Oasis folks
7 came at least a week or two earlier when we know for a fact
8 that was not the case, it's the 23 and the 26th that the on
9 boarding was done and that's the exact same day his documents
10 were splitted. There's just been somany indone cyst ten cease
11 that he's presented that I'm not sure how you would parse
12 through what is accurate anymore in terms of what he's
13 alleging, and that's all I'd like to say on that.

14 THE COURT: Okay, well thank you both very much.
15 Hold on just one second.

16 THE COURT: Okay, I don't have any further questions
17 either. I'll take this under advisement. And as I said, I
18 already have the motion papers, so this is just part of the
19 motion, it's not everything but I expect to be able to resolve
20 this in the relatively near future and I'll issue a written
21 opinion then we see where we go from there. Okay. Anything
22 further?

23 MR. KATZ: Nothing further, your Honor. Thank you.

24 MR. KATZ: Nothing further, thank you your Honor.

25 THE COURT: Thankful all very much. Have a good day.

center header

1 THE CLERK: All rise this Court will be in recess.

2 (.

3 (Proceedings concluded).

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25